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TRANSCRIPT OF RECORD

UPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 310

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MANHATTAN LIGHTERAGE CORPORATION

PEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

FILED AUGUST 30, 1938

PREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 310

HE UNITED STATES OF AMERICA, APPELLANT

vs.

MANHATTAN LIGHTERAGE CORPORATION

PEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

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A In United States District Court, District of New Jersey

I, Benjamin F. Havens, Clerk of the District Court of the United States for the District of New Jersey, do hereby certify that the annexed is a true copy of Indictment No. 7919b in U. S. vs. Manhattan Lighterage Corporation, filed April 9, 1937, as the same remains of record, and on file in my office.

In testimony whereof, I have hereto subscribed my name and affixed the seal of said Court, at Trenton, in said District, this 26th day of August, A. D, nineteen hundred and thirty-eight.

[SEAL] BENJAMIN F. HAVEN,
Clerk.

Per AMY D. BOND,
Deputy Clerk.

1 In United States District Court, District of New Jersey

Indictment

Filed April 9, 1937

In the District Court of the United States of America in and for the District of New Jersey, at the January Term thereof, in the year 1937.

The Grand Jurors of the United States of America duly empaneled, sworn, and charged to inquire in and for the body of the said District of New Jersey, upon their oaths present:

COUNT 1

1. That throughout the period extending from January 1, 1932, to and including August 31, 1933, Manhattan Lighterage Corporation, hereinafter called defendant, was and still is a corporation of the State of New York, and was engaged, among other things, in the operation of tank barges in New York Harbor and in the business of transporting by tank barge certain bulk fluid commodities, to wit, palm oil, cocoanut oil, olive oil foots, china wood oil, perilla oil, soya bean oil, fish oil, and molasses, from alongside steamship and other points in said New York Harbor to the railway lines and rail terminals of common carriers by railroad located at points contiguous to New York Harbor.

2. That throughout said period Lehigh Valley Railroad Company and Pere Marquette Railway Company, were and still are
2 corporation common carriers engaged in the transportation of property, in interstate commerce, by railroad, for hire, and over and by means of their respective connecting railway lines, operated a through railway route for the transportation of property including palm oil, in carload lots, from alongside vessels and other points in said New York Harbor to a certain point on the line of

said Pere Marquette Railway Company, to wit, Chicago in the State of Illinois.

3. That throughout said period said common carriers had printed and had published and had filed with the Interstate Commerce Commission schedules and tariffs of rates and charges which named and showed the joint rate and charge of said common carriers for the transportation of palm oil, in carload lots, from said New York Harbor to said Chicago, over said through railway route, to be 40 cents per 100 pounds, said rate being hereinafter referred to as the line haul rate; that said schedules and tariffs providing said line haul rate further provided that said rate applied from points within free lighterage limits of said New York Harbor as provided for and in accordance with certain tariffs and schedules of rules, regulations, and charges governing the acceptance and handling of freight at, and for all deliveries in, said New York Harbor, which said last mentioned tariffs and schedules had been duly printed and had been published and had been filed with the Interstate Commerce Commission, by said Lehigh Valley Railroad Company; that said
3 last mentioned tariffs and schedules provided and defined free lighterage and floatage limits in said New York Harbor and further provided that, when ordered by the shipper or consignee in writing and tank barges were available, such articles therein designated as "not lighterage free," including palm oil, would be handled in lots of 240,000 pounds or more, in tank barges in lieu of tank cars on floats from alongside steamship and other points in said free lighterage and floatage limits in said New York Harbor as defined in said schedules and tariffs, to the rail terminals of said Lehigh Valley Railroad Company, the transfer from barges to tank cars to be at the expense of the shipper or consignee, for which service a charge of 2 cents per 100 pounds, hereinafter referred to as pumping charge, would be made in addition to said line haul rate; that said rate of 40 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of palm oil hereinafter described.

4. That during said period on, to wit, August 12, 1932, Durkee Famous Foods, Inc., as consignor, tendered to said Lehigh Valley Railroad Company at a certain point in New York Harbor, to wit, Pier 60, North River, in the State of New York, and said point being within said free lighterage and floatage limits of said New York Harbor as defined in said schedules and tariffs, together with other shipments of palm oil weighing in excess of 240,000 pounds, a shipment of palm oil of an aggregate weight of, to wit, 120,880 pounds, that being two carload lots, which said palm oil was part of a larger lot of palm oil theretofore transported to said New
4 York Harbor by a certain vessel, to wit, S. S. "Georgic," with directions to transport said 120,880 pounds of palm oil from said Pier 60 in said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.

hat during said period on, to wit, August 5, 1932, said Durkee
s Foods, Inc., did order in writing from said Lehigh Valley
ad Company tank barges in lieu of tank cars on floats for the
ng, from alongside said vessel in said New York Harbor to
l terminal of said Lehigh Valley Railroad Company at Clare-
Terminal in the State of New Jersey, of said lot of palm oil
had been transported as aforesaid to said New York Harbor
l vessel.

hat said Lehigh Valley Railroad Company did thereupon, at
ier 60 accept delivery of said 120,880 pounds of palm oil and,
arges being then and there available, did handle, by and
h its agent, said defendant, acting for and employed by said
Valley Railroad Company, said lot of palm oil by tank barge
aid Pier 60 to said rail terminal at said Claremont Terminal,
said Claremont Terminal said defendant, acting for and on
of said Lehigh Valley Railroad Company, did pump said palm
o certain railway tank cars bearing the initials and numbers
227 and ISTX 285; that thereafter said common carriers did
ort by railroad said shipment, loaded in and upon said railroad
ars as aforesaid, over said connecting railway lines in and
through the District of New Jersey and within the jurisdiction
of this Court, to said Chicago and did collect from said Durkee
Famous Foods, Inc., freight charges in the amount of, to wit,
based only upon the aforesaid line haul rate of 40 cents per
unds and said weight of, to wit, 120,880 pounds.

hat on, to wit, August 17, 1932, said defendant, pursuant to an
ement and agreement theretofore made with said Durkee Fa-
Foods, Inc., and with intent secretly to assume and absorb for
nefit of said Durkee Famous Foods, Inc., said pumping charge
nts per 100 pounds provided in said schedules and tariffs and
able upon said shipment of palm oil, did pay and cause to be
o said Lehigh Valley Railroad, said pumping charge in the sum
wit, $24.18, being at the rate of 2 cents per 100 pounds upon
oresaid weight of, to wit, 120,880 pounds.

hat said Durkee Famous Foods, Inc., did pay for the said trans-
ion, including said pumping of the oil from tank barge to tank
aid sum of $483.54, and only said sum of $483.54, instead of the
aggregate freight charge, applicable under the aforesaid
and schedules, of, to wit, $507.72, based and computed upon
ne haul rate of 40 cents per 100 pounds and said weight of, to
20,880 pounds, plus said pumping charge of 2 cents per 100
s and said weight of, to wit, 120,880 pounds; and said Durkee
us Foods, Inc., did refrain from paying said common carriers or
of them or said defendant or any other person or corporation,
umping charge of 2 cents per 100 pounds applicable upon said
ent of palm oil under and by virtue of said tariffs and
ules.

6 9. That on, to wit, August 17, 1932, Manhattan Lighte
Corporation, defendant aforesaid, in the District of
Jersey and within the jurisdiction of this Court, well knowing
premises aforesaid, unlawfully did knowingly, by means of the de
aforesaid, offer, grant, and give a concession of 2 cents per 100 po
in respect of the transportation of the aforesaid shipment of prop
by said common carriers in interstate commerce whereby said p
erty was transported for said Durkee Famous Foods, Inc., from
New York Harbor to said Chicago at a less rate and charge than
named and provided in the schedules and tariffs of said common
riers published and filed as aforesaid; contrary to the form of
statute in such case made and provided and against the peace
dignity of the United States.

7 COUNT 2

And the Grand Jurors aforesaid, upon their oaths aforesaid,
further present:

1. The facts set forth in paragraphs numbered 1, 2, and 3 of
first count of this indictment, which said facts are hereby refer
to and incorporated in this count as fully as if they were he
repeated.

2. That during said period on, to wit, August 12, 1932, Dur
Famous Foods, Inc., as consignor, tendered to said Lehigh Va
Railroad Company at a certain point in New York Harbor, to
Pier 60, North River in the State of New York, said point be
within said free lighterage and floatage limits of said New Y
Harbor as defined in said schedules and tariffs, together with ot
shipments of palm oil weighing in excess of 240,000 pounds, a sh
ment of palm oil of an aggregate weight of, to wit, 121,000 pou
that being two carload lots, which said palm oil was part of a la
lot of palm oil theretofore transported to said New York Harbor
a certain vessel, to wit, S. S. "Georgic," with directions to trans
said 121,000 pounds of palm oil from said Pier 60 in said New Y
Harbor over said connecting railway lines, to said Chicago, consig
to said Durkee Famous Foods, Inc.

3. That during said period on, to wit, August 5, 1932, said Dur
Famous Foods, Inc., did order in writing from said Lehigh Va
Railroad Company tank barges in lieu of tank cars on flo
8 for the handling, from alongside said vessel in said New Y
Harbor to the rail terminal of said Lehigh Valley Railr
Company at Claremont Terminal in the State of New Jersey, of s
lot of palm oil which had been transported as aforesaid to said N
York Harbor by said vessel.

4. That said Lehigh Valley Railroad Company did thereupon
said Pier 60 accept delivery of said 121,000 pounds of palm oil a
tank barges being then and there available, did handle, by and throu
its agent, said defendant, acting for and employed by said Leh
Valley Railroad Company, said lot of palm oil by tank barge fr

said Pier 60 to said rail terminal at said Claremont Terminal, and at said Claremont Terminal said defendant, acting for and on behalf of said Lehigh Valley Railroad Company, did pump said palm oil into certain railway tank cars bearing the initials and numbers ISTX 267 and ISTX 194; that thereafter said common carriers did transport by railroad said shipment, loaded in and upon said railroad tank cars as aforesaid, over said connecting railway lines in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $484.00 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 121,000 pounds.

5. That on, to wit, August 17, 1932, said defendant, pursuant to an arrangement and agreement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of palm oil, did pay and cause to be paid to said Lehigh Valley Railroad, said pumping charge in the sum of, to wit, $24.20, being at the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 121,000 pounds.

6. That said Durkee Famous Foods, Inc., did pay for the said transportation, including said pumping of the oil from tank barge to tank cars, said sum of $484.00, and only said sum of $484.00, instead of the lawful aggregate freight charge, applicable under the aforesaid tariffs and schedules, of, to wit, $508.20, based and computed upon said line haul rate of 40 cents per 100 pounds and said weight of, to wit, 121,000 pounds, plus said pumping charge of 2 cents per 100 pounds and said weight of, to wit, 121,000 pounds; and said Durkee Famous Foods, Inc., did refrain from paying said common carriers or either of them or said defendant or any other person or corporation said pumping charge of 2 cents per 100 pounds applicable upon said shipment of palm oil under and by virtue of said tariffs and schedules.

7. That on, to wit, August 17, 1932, Manhattan Lighterage Corporation, defendant aforesaid, in the District of New Jersey and within the jurisdiction of this Court, well knowing the premises aforesaid, unlawfully did knowingly, by means of the device aforesaid, offer, grant and give a concession of 2 cents per 100 pounds in respect of the transportation of the aforesaid shipment of property by said common carriers in interstate commerce whereby said property was transported for said Durkee Famous Foods, Inc., from said New York Harbor to said Chicago at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

11 COUNT 3

And the Grand Jurors aforesaid, upon their oaths aforesaid, further present:

1. The facts set forth in paragraphs numbered 1, 2, and 3 of the first count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were here repeated.

2. That during said period on, to wit, August 12, 1932, Durkee Famous Foods, Inc., tendered to said Lehigh Valley Railroad Company at Pier 60, North River, in the State of New York, such pier being within said free lighterage and floatage limits of said New York Harbor as defined in said schedules and tariffs, together with other shipments of palm oil weighing in excess of 240,000 pounds a shipment of palm oil of an aggregate weight of, to wit, 120,940 pounds, that being two carload lots, which said palm oil was part of a larger lot of palm oil theretofore transported to said New York Harbor by a certain vessel, to wit, S.S. "Georgic," with direction to transport said 120,940 pounds of palm oil from said Pier 60 in said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.

3. That during said period on, to wit, August 5, 1932, said Durkee Famous Foods, Inc., did order in writing from said Lehigh Valley Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor

12 to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of palm oil which had been transported as aforesaid to said New York Harbor by said vessel.

4. That said Lehigh Valley Railroad Company did thereupon, at said Pier 60 accept delivery of said 120,940 pounds of palm oil and, tank barges being then and there available, did handle, by and through its agent, said defendant, acting for and employed by said Lehigh Valley Railroad Company, said lot of palm oil by tank barge from said Pier 60 to said rail terminal at said Claremont Terminal, and at said Claremont Terminal said defendant, acting for and on behalf of said Lehigh Valley Railroad Company, did pump said palm oil into certain railway tank cars bearing the initials and numbers ISTX 417 and ISTX 422; that thereafter said common carrier did transport by railroad said shipment, loaded in and upon said railroad tank cars as aforesaid, over said connecting railway lines in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $483.76 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 120,940 pounds.

5. That on, to wit, August 17, 1932, said defendant, pursuant to an arrangement and agreement theretofore made with said Durkee

us Foods, Inc., and with intent secretly to assume and absorb
e benefit of said Durkee Famous Foods, Inc., said pumping
charge of 2 cents per 100 pounds provided in said schedules
and tariffs and applicable upon said shipment of palm oil, did
pay and cause to be paid to said Lehigh Valley Railroad, said
ing charge in the sum of, to wit, $24.19, being at the rate of
s per 100 pounds upon the aforesaid weight of, to wit, 120,940
ls.

That said Durkee Famous Foods, Inc., did pay for the said trans-
tion, including said pumping of the oil from tank barge to tank
aid sum of $483.76, and only said sum of $483.76, instead of the
l aggregate freight charge, applicable under the aforesaid tar-
nd schedules, of, to wit, $507.95, based and computed upon said
ail rate of 40 cents per 100 pounds and said weight of, to wit,
0 pounds, plus said pumping charge of 2 cents per 100 pounds
aid weight of, to wit, 120,940 pounds; and said Durkee Famous
s, Inc., did refrain from paying said common carriers or either
em or said defendant or any other person or corporation, said
ing charge of 2 cents per 100 pounds applicable upon said ship-
of palm oil under and by virtue of said tariffs and schedules.

That on, to wit, August 17, 1932, Manhattan Lighterage Corpora-
defendant aforesaid, in the District of New Jersey and within
risdiction of this Court, well knowing the premises aforesaid,
fully did knowingly, by means of the device aforesaid, offer,
and give a concession of 2 cents per 100 pounds in respect of
ansportation of the aforesaid shipment of property by said com-
arriers in interstate commerce whereby said property was trans-
d for said Durkee Famous Foods, Inc., from said New York
Harbor to said Chicago at a less rate and charge than that
named and and provided in the schedules and tariffs of said
common carriers published and filed as aforesaid; contrary to
orm of the statute in such case made and provided and against
eace and dignity of the United States.

COUNT 4

d the Grand Jurors aforesaid, upon their oaths aforesaid, do
er present:

The facts set forth in paragraphs numbered 1, 2, and 3 of the
ount of this indictment, which said facts are hereby referred to
incorporated in this count as fully as if they were herein
ted.

That during said period on, to wit, August 12, 1932, Durkee
us Foods, Inc., tendered to said Lehigh Valley Railroad Com-
at Pier 60, North River, in the State of New York, such point
within said free lighterage and floatage limits of said New
Harbor as defined in said schedules and tariffs, together with
shipments of palm oil weighing in excess of 240,000 pounds,
pment of palm oil of an aggregate weight of, to wit, 120,120

pounds, that being two carload lots, which said palm oil was part of a larger lot of palm oil theretofore transported to said New York Harbor by a certain vessel, to wit, "S. S. Georgic," with direction to transport said 120,120 pounds of palm oil from said Pier 60 in said New York Harbor over said connecting railway lines, to said Chicago consigned to said Durkee Famous Foods, Inc.

3. That during said period on, to wit, August 5, 1932, said Durkee Famous Foods, Inc., did order in writing from said Lehigh Valley Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of palm
16 oil which had been transported as aforesaid to said New York Harbor by said vessel.

4. That said Lehigh Valley Railroad Company did thereupon, at said Pier 60 accept delivery of said 120,120 pounds of palm oil and tank barges being then and there available, did handle, by and through its agent, said defendant, acting for and employed by said Lehigh Valley Railroad Company, said lot of palm oil by tank barges from said Pier 60 to said rail terminal at said Claremont Terminal and at said Claremont Terminal said defendant, acting for and on behalf of said Lehigh Valley Railroad Company, did pump said palm oil into certain railway tank cars bearing the initials and numbers ISTX 43 and ISTX 306; that thereafter said common carriers did transport by railroad said shipment, loaded in and upon said railroad tank cars as aforesaid, over said connecting railway lines in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $480.48 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit. 120,120 pounds.

5. That on, to wit, August 17, 1932, said defendant pursuant to an arrangement and agreement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc. said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of palm oil, did pay and cause to be paid to said Lehigh Valley Railroad Company, said pumping charge in the sum of, to wit, $24.02, being at the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 120,120
pounds.

17 6. That said Durkee Famous Foods, Inc., did pay for the said transportation, including said pumping of the oil from tank barge to tank cars, said sum of $480.48, and only said sum of $480.48, instead of the lawful aggregate freight charge, applicable under the aforesaid tariffs and schedules, of, to wit, $504.50, based and computed upon said line haul rate of 40 cents per 100 pounds and said weight of, to wit, 120,120 pounds, plus said pumping charge

2 cents per 100 pounds and said weight of, to wit, 120,120 pounds; d said Durkee Famous Foods, Inc., did refrain from paying said mmon carriers or either of them or said defendant or any other rson or corporation said pumping charge of 2 cents per 100 pounds plicable upon said shipment of palm oil under and by virtue of said riffs and schedules.

7. That on, to wit, August 17, 1932, Manhattan Lighterage Corration, defendant aforesaid, in the District of New Jersey and ithin the jurisdiction of this Court, well knowing the premises aforeid, unlawfully did knowingly, by means of the device aforesaid, ler, grant, and give a concession of 2 cents per 100 pounds in reect of the transportation of the aforesaid shipment of property by id common carriers in interstate commerce whereby said property as transported for said Durkee Famous Foods, Inc., from said New ork Harbor to said Chicago at a less rate and charge than that named d provided in the schedules and tariffs of said common carriers ublished and filed as aforesaid, contrary to the form of the statute such case made and provided and against the peace and dignity the United States

COUNT 5

And the Grand Jurors aforesaid, upon their oaths aforesaid, do rther present:

1. The facts set forth in paragraphs numbered 1, 2, and 3 of the st count of this indictment, which said facts are hereby referred and incorporated in this count as fully as if they were herein peated.

2. That during said period on, to wit, August 12, 1932, Durkee mous Foods, Inc., tendered to said Lehigh Valley Railroad Comny at Pier 60, North River, in the State of New York, such point ing within said free lighterage and floatage limits of said New ork Harbor as defined in said schedules and tariffs, together with her shipments of palm oil weighing in excess of 240,000 pounds, a ipment of palm oil of an aggregate weight of, to wit, 101,080 unds, that being two carload lots, which said palm oil was part of larger lot of palm oil theretofore transported to said New York arbor by a certain vessel, to wit, "S. S. Georgic," with directions transport said 101,080 pounds of palm oil from said Pier 60 in id New York Harbor over said connecting railway lines, to said hicago, consigned to said Durkee famous Foods, Inc.

3. That during said period on, to wit, August 5, 1932, said Durkee mous Foods, Inc., did order in writing from said Lehigh Valley ailroad Company tank barges in lieu of tank cars on floats for the ndling, from alongside said vessel in said New York Harbor to the il terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of palm oil which had been transported as aforesaid to said New York Harbor by said vessel.

4. That said Lehigh Valley Railroad Company did thereupon ... said Pier 60 accept delivery of said 101,080 pounds of palm oil ... tank barges being then and there available, did handle, by and thro... its agent, said defendant, acting for and employed by said Le... Valley Railroad Company, said lot of palm oil by tank barge f... said Pier 60 to said rail terminal at said Claremont Terminal, ... at said Claremont Terminal said defendant, acting for and ... behalf of said Lehigh Valley Railroad Company, did pump ... palm oil into certain railway tank cars bearing the initials ... numbers ISTX 288 and ISTX 320; that thereafter said com... carriers did transport by railroad said shipment, loaded in and ... said railroad tank cars as aforesaid, over said connecting railway l... in and through the District of New Jersey and within the jurisdic... of this Court, to said Chicago and did collect from said Du... Famous Foods, Inc., freight charges in the amount of, to wit, $40... based only upon the aforesaid line haul rate of 40 cents per ... pounds and said weight of, to wit, 101,080 pounds.

5. That on, to wit, August 17, 1932, said defendant, pursuant to ... arrangement and agreement theretofore made with said Du... Famous Foods, Inc., and with intent secretly to assume and ab... for the benefit of said Durkee Famous Foods, Inc., said pump... charge of 2 cents per 100 pounds provided in said schedules ... tariffs and applicable upon said shipment of palm oil, did pay ... cause to be paid to said Lehigh Valley Railroad Company, ... pumping charge in the sum of, to wit, $24.19, being at the rate of ... cents per 100 pounds upon the aforesaid weight of, to wit, 101,... pounds.

21 6. That said Durkee Famous Foods, Inc., did pay for t... said transportation, including said pumping of the oil fr... tank barge to tank cars, said sum of $404.32, and only said sum ... $404.32, instead of the lawful aggregate freight charge, applica... under the aforesaid tariffs and schedules, of, to wit, $424.53, based ... computed upon said line haul rate of 40 cents per 100 pounds and ... weight of, to wit, 101,080 pounds, plus said pumping charge of ... cents per 100 pounds and said weight of, to wit, 101,080 pounds; ... said Durkee Famous Foods, Inc., did refrain from paying said co... mon carriers or either of them or said defendant or any other pe... son or corporation, said pumping charge of 2 cents per 100 pou... applicable upon said shipment of palm oil under and by virtue ... said tariffs and schedules.

7. That on, to wit, August 17, 1932, Manhattan Lighterage Co... poration, defendant aforesaid, in the District of New Jersey a... within the jurisdiction of this Court, well knowing the premi... aforesaid, unlawfully did knowingly, by means of the device afo... said, offer, grant and give a concession of 2 cents per 100 pounds ... respect of the transportation of the aforesaid shipment of prope... by said common carriers in interstate commerce whereby said pro... erty was transported for said Durkee Famous Foods, Inc., from ...

w York Harbor to said Chicago at a less rate and charge than that ned and provided in the schedules and tariffs of said common car- s published and filed as aforesaid; contrary to the form of the tute in such case made and provided and against the peace and nity of the United States.

COUNT 6

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

1. The facts set forth in paragraph numbered one of the first count this indictment, which said facts are hereby referred to and in- porated in this count as fully as if they were herein repeated.

2. That throughout said period Lehigh Valley Railroad Company d The New York, Chicago & St. Louis Railroad Company were and l are, corporation common carriers engaged in the transportation property, in interstate commerce, by railroad, for hire, and over d by means of their respective connecting railway lines, operated a ough railway route for the transportation of property, including oanut oil in carload lots, from alongside vessels and other points New York Harbor to a certain point on the line of said The New rk, Chicago & St. Louis Railroad Company, to wit, Chicago in the te of Illinois.

3. That throughout said period said common carriers had printed d had published and had filed with the Interstate Commerce Com- ssion schedules and tariffs of rates and charges which named and owed the joint rate and charge of said common carriers for the nsportation of cocoanut oil in carload lots, from said New York rbor to said Chicago, over said through railway route, to be 40 cents per 100 pounds, said rate being hereinafter referred to as the line haul rate; that said schedules and tariffs providing said line haul rate further provided that said rate applied from nts within free lighterage limits of said New York Harbor as pro- ded for and in accordance with certain tariffs and schedules of rules, gulations, and charges governing the acceptance and handling of ight at, and for all deliveries in, said New York Harbor, which d last mentioned tariffs and schedules had been duly printed and d been published and had been filed with the Interstate Commerce mmission by said Lehigh Valley Railroad Company; that said last entioned tariffs and schedules provided and defined free lighterage d floatage limits in said New York Harbor and further provided at, when ordered by the shipper or consignee in writing and tank rges were available, such articles therein designated as "not light- ge free," including cocoanut oil, would be handled in lots of 240,- 0 pounds or more, in tank barges in lieu of tank cars on floats from ngside steamship and other points in said free lighterage and float- e limits in said New York Harbor as defined in said schedules and riffs, to the rail terminals of said Lehigh Valley Railroad Company, e transfer from barges to tank cars to be at the expense of the ship-

per or consignee; for which service a charge of 2 cents per 100 pou
hereinafter referred to as pumping charge, would be made in ad
tion to said line haul rate; that said rate of 40 cents per 100 pou
and said pumping charge of 2 cents per 100 pounds, were the lawf
rates and the only lawful rates applicable on the shipment of coc
nut oil hereinafter described.

24 4. That during said period, on, to wit, April 15, 1933, Durk
Famous Foods, Inc., as consignor, tendered to said Lehigh Va
ley Railroad Company at a certain point in New York Harbor,
wit, 29th Street Pier, Brooklyn, in the State of New York, said po
being within said free lighterage and floatage limits of said New Y
Harbor as defined in said schedules and tariffs, together with ot
shipments of cocoanut oil weighing in excess of 240,000 pounds,
shipment of cocoanut oil of an aggregate weight of, to wit, 58,
pounds, that being a carload lot, which said cocoanut oil was part
a larger lot of cocoanut oil theretofore transported to said New Y
Harbor by a certain vessel, to wit, S. S. "Steel Scientist," with dir
tions to transport said 58,320 pounds of cocoanut oil from said 2
Street Pier in said New York Harbor over said connecting railw
lines, to said Chicago, consigned to said Durkee Famous Foods, In

5. That prior to April 15, 1933, said Durkee Famous Foods, In
did order in writing from said Lehigh Valley Railroad Company ta
barges in lieu of tank cars on floats for the handling, from along
said vessel in said New York Harbor to the rail terminal of s
Lehigh Valley Railroad Company at Claremont Terminal in t
State of New Jersey, of said lot of cocoanut oil which had been tra
ported as aforesaid to said New York Harbor by said vessel.

6. That said Lehigh Valley Railroad Company did thereupon,
said 29th Street Pier, accept delivery of said 58,320 pounds of coc
nut oil and, tank barges being then and there available, did hand
by and through its agent, said defendant, acting for and emplo
by said Lehigh Valley Railroad Company, said lot of cocoanut
by tank barge from said 29th Street Pier to said rail termi

25 at said Claremont Terminal, and at said Claremont Termi
said defendant, acting for and on behalf of said Lehigh Val
Railroad Company, did pump said cocoanut oil into a certain r
way tank car bearing the initials and number SHPX 7609; t
thereafter said common carriers did transport by railroad said sh
ment, loaded in and upon said railroad tank car as aforesaid, o
said connecting railway lines in and through the District of N
Jersey and within the jurisdiction of this Court, to said Chicago
did collect from said Durkee Famous Foods, Inc., freight charges
the amount of, to wit, $233.28 based only upon the aforesaid line h
rate of 40 cents per 100 pounds and said weight of, to wit, 58,
pounds.

7. That on, to wit, April 21, 1933, said defendant, pursuant to an
rangement and agreement theretofore made with said Durkee Fa
mous Foods, Inc., and with intent secretly to assume and absorb
the benefit of said Durkee Famous Foods, Inc., said pumping cha

nts per 100 pounds provided in said schedules and tariffs and
ble upon said shipment of cocoanut oil, did pay and cause to
l to said Lehigh Valley Railroad, said pumping charge in the
, to wit, $11.66, being at the rate of 2 cents per 100 pounds
he aforesaid weight of, to wit, 58,320 pounds.

hat said Durkee Famous Foods, Inc., did pay for the said
ortation, including said pumping of the oil from tank barge
r cars, said sum of $233.28, and only said sum of $233.28, in-
stead of the lawful aggregate freight charge, applicable under
the aforesaid tariffs and schedules, of, to wit, $244.94, based
and computed upon said line haul rate of 40 cents per 100
s and said weight of, to wit, 58,320 pounds, plus said pumping
of 2 cents per 100 pounds and said weight of, to wit, 58,320
s; and said Durkee Famous Foods, Inc., did refrain from pay-
id common carriers or either of them, or said defendant or any
person or corporation, said pumping charge of 2 cents per 100
s applicable upon said shipment of cocoanut oil under and by
of said tariffs and schedules.

hat on, to wit, April 21, 1933, Manhattan Lighterage Corpora-
lefendant aforesaid, in the District of New Jersey and within
risdiction of this Court, well knowing the premises aforesaid,
fully did knowingly, by means of the device aforesaid, offer,
and give a concession of 2 cents per 100 pounds in respect of
ansportation of the aforesaid shipment of property by said
on carriers in interstate commerce whereby said property was
orted for said Durkee Famous Foods, Inc., from said New York
r to said Chicago at a less rate and charge than that named
rovided in the schedules and tariffs of said common carriers
hed and filed as aforesaid; contrary to the form of the statute
h case made and provided and against the peace and dignity
United States.

COUNT 7

l the Grand Jurors aforesaid, upon their oaths aforesaid, do
r present:

The facts set forth in paragraphs numbered 1 of the first count
and 3 of the sixth count of this indictment, which said facts
reby preferred to and incorporated in this count as fully as if
were herein repeated.

That during said period on, to wit, April 15, 1933, Durkee
us Foods, Inc., tendered to said Lehigh Valley Railroad Com-
at 29th Street Pier, Brooklyn, in the State of New York, such
being within said free lighterage and floating limits of said
York Harbor as defined in said schedules and tariffs, together
other shipments of cocoanut oil weighing in excess of 240,000
ds, a shipment of cocoanut oil of an aggregate weight of, to wit,
) pounds, that being a carload lot, which said cocoanut oil was
of a larger lot of cocoanut oil theretofore transported to said

New York Harbor by a certain vessel, to wit, S. S. "Steel Scientist" with directions to transport said 62.640 pounds of cocoanut oil from said 29th Street Pier in said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.

3. That prior to April 15, 1933, said Durkee Famous Foods, Inc. did order in writing from said Lehigh Valley Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of cocoanut oil which had been transported as aforesaid to said New York Harbor by said vessel.

28 4. That said Lehigh Valley Railroad Company did thereupon, at said 29th Street Pier accept delivery of said 62,640 pounds of cocoanut oil and, tank barges being then and there available, did handle, by and through its agent, said defendant, acting for and employed by said Lehigh Valley Railroad Company, said lot of cocoanut oil by tank barge from said 29th Street Pier to said rail terminal at said Claremont Terminal, and at said Claremont Terminal said defendant, acting for and on behalf of said Lehigh Valley Railroad Company, did pump said cocoanut oil into a certain railway tank car bearing the initials and number SHPX 8778; that thereafter said common carriers did transport by railroad said shipment, loaded in and upon said railroad tank car as aforesaid, over said connecting railway lines in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $250.56 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 62,640 pounds.

5. That on, to wit, April 21, 1933, said defendant, pursuant to an arrangement and agreement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of cocoanut oil, did pay and cause to be paid to said Lehigh Valley Railroad Company, said pumping charge in the sum of, to wit, $12.53, being at the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 62,640.

29 6. That said Durkee Famous Foods, Inc., did pay for the said transportation, including said pumping of the oil from tank barge to tank cars, said sum of $250.56, and only said sum of $250.56, instead of the lawful aggregate freight charge, applicable under the aforesaid tariffs and schedules, of, to wit, $263.09, based and computed upon said line haul rate of 40 cents per 100 pounds and said weight of, to wit, 62,640 pounds, plus said pumping charge of 2 cents per 100 pounds and said weight of, to wit, 62,640 pounds; and said Durkee Famous Foods, Inc., did refrain from paying said common carriers or either of them or said defendant or any other

erson or corporation, said pumping charge of 2 cents per 100 pounds pplicable upon said shipment of cocoanut oil under and by virtue of id tariffs and schedules.

7. That on, to wit, April 21, 1933, Manhattan Lighterage Corporation, defendant aforesaid, in the District of New Jersey and within he jurisdiction of this Court, well knowing the premises aforesaid, unlawfully did knowingly, by means of the device aforesaid, offer, grant, and give a concession of 2 cents per 100 pounds in respect o the transportation of the aforesaid shipment of property by said ommon carriers in interstate commerce whereby said property was ransported for said Durkee Famous Foods, Inc., from said New York Harbor to said Chicago at a less rate and charge than that named and provided in the schedules and tariffs of said common arriers published and filed as aforesaid; contrary to the form of the tatute in such case made and provided and against the peace and ignity of the United States.

COUNT 8

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1 of the first count nd 2 and 3 of the sixth count of this indictment, which said facts re hereby referred to and incorporated in this count as fully as if hey were herein repeated.

2. That during said period on, to wit, April 15, 1933, Durkee Famous Foods, Inc., tendered to said Lehigh Valley Railroad Company at 29th Street Pier, Brooklyn, in the State of New York, such point being within said free lighterage and floatage limits of said New York Harbor as defined in said schedules and tariffs, together with other shipments of cocoanut oil weighing in excess of 240,000 pounds, a shipment of cocoanut oil of an aggregate weight of, to wit, 62,660 pounds, that being a carload lot, which said cocoanut oil was part of a larger lot of cocoanut oil theretofore transported to said New York Harbor by a certain vessel, to wit, S. S. "Steel Scientist", with directions to transport said 62,660 pounds of cocoanut oil from said 29th Street Pier in said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.

3. That prior to April 15, 1933, said Durkee Famous Foods, Inc., did order in writing from said Lehigh Valley Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of cocoanut oil which had been transported as aforesaid to said New York Harbor by said vessel.

31 4. That said Lehigh Valley Railroad Company did then
upon, at said 29th Street Pier accept delivery of said
pounds of cocoanut oil and, tank barges being then and there
able, did handle, by and through its agent, said defendant, acting
and employed by said Lehigh Valley Railroad Company, said
cocoanut oil by tank barge from said 29th Street Pier to said
terminal at said Claremont Terminal, and at said Claremont Ter-
minal said defendant, acting for and on behalf of said Lehigh Valley
Railroad Company, did pump said cocoanut oil into a certain rail-
way tank car bearing the initials and number SHPX 8666; that
thereafter said common carriers did transport by railroad said
shipment loaded in and upon said railroad tank car as aforesaid
over said connecting railway lines in and through the District of
New Jersey and within the jurisdiction of this Court, to said Chi-
cago and did collect from said Durkee Famous Foods, Inc., freight
charges in the amount of, to wit, $250.64 based only upon the afore-
said line haul rate of 40 cents per 100 pounds and said weight of, to
wit, 62,660 pounds.

5. That on, to wit, April 21, 1933, said defendant, pursuant to an
arrangement and agreement theretofore made with said Durkee
Famous Foods, Inc., and with intent secretly to assume and absorb
for the benefit of said Durkee Famous Foods, Inc., said pumping
charge of 2 cents per 100 pounds provided in said schedules and
tariffs and applicable upon said shipment of cocoanut oil, did pay
and cause to be paid to said Lehigh Valley Railroad Company, said
pumping charge in the sum of, to wit, $12.53, being at the rate of
2 cents per 100 pounds upon the aforesaid weight of, to wit, 62,66
pounds.

32 6. That said Durkee Famous Foods, Inc., did pay for the said
transportation, including said pumping of the oil from tank
barge to tank cars, said sum of $250.64, and only said sum of $250.64
instead of the lawful aggregate freight charge, applicable under the
aforesaid tariffs and schedules, of, to wit, $273.17, based and computed
upon said line haul rate of 40 cents per 100 pounds and said weight
of, to wit, 62,660 pounds, plus said pumping charge of 2 cents per
100 pounds and said weight of, to wit, 62,660 pounds; and said
Durkee Famous Foods, Inc., did refrain from paying said common
carriers or either of them or said defendant or any other person
or corporation, said pumping charge of 2 cents per 100 pounds appli-
cable upon said shipment of cocoanut oil under and by virtue of said
tariffs and schedules.

7. That on, to wit, April 21, 1933, Manhattan Lighterage Corpo-
ration, defendant aforesaid, in the District of New Jersey and within
the jurisdiction of this Court, well knowing the premises aforesaid,
unlawfully did knowingly, by means of the device aforesaid, offer,
grant and give a concession of 2 cents per 100 pounds in respect of
the transportation of the aforesaid shipment of property by said
common carriers in interstate commerce whereby said property was

ansported for said Durkee Famous Foods, Inc., from said New ork Harbor to said Chicago at a less rate and charge than that amed and provided in the schedules and tariffs of said common car- ers published and filed as aforesaid; contrary to the form of the atute in such case made and provided and against the peace and nity of the United States.

COUNT 9

And the Grand Jurors aforesaid, upon their oaths aforesaid, do rther present:

1. The facts set forth in paragraph numbered 1 of the first count nd 2 and 3 of the sixth count of this indictment, which said facts re hereby referred to and incorporated in this count as fully as if ey were herein repeated.

2. That during said period on, to wit, April 15, 1933, Durkee amous Foods, Inc., tendered to said Lehigh Valley Railroad Com- any at 29th Street Pier, Brooklyn, in the State of New York, such oint being within said free lighterage and floatage limits of said ew York Harbor as defined in said schedules and tariffs, together ith other shipments of cocoanut oil weighing in excess of 240,000 ounds, a shipment of cocoanut oil of an aggregate weight of, to it, 57,720 pounds, that being a carload lot, which said cocoanut oil as part of a larger lot of cocoanut oil theretofore transported to id New York Harbor by a certain vessel, to wit, S. S. "Steel Scien- st," with directions to transport said 57,720 pounds of cocoanut oil rom said 29th Street Pier in said New York Harbor over said onnecting railway lines, to said Chicago, consigned to said Durkee amous Foods, Inc.

3. That prior to April 15, 1933, said Durkee Famous Foods, Inc., id order in writing from said Lehigh Valley Railroad Company ank barges in lieu of tank cars on floats for the handling, from longside said vessel in said New York Harbor to the rail terminal f said Lehigh Valley Railroad Company at Claremont Terminal n the State of New Jersey, of said lot of cocoanut oil which had een transported as aforesaid to said New York Harbor by said vessel.

4. That said Lehigh Valley Railroad Company did there- upon, at said 29th Street Pier accept delivery of said 57,720 ounds of cocoanut oil and, tank barges being then and there avail- ble, did handle, by and through its agent, said defendant, acting r and employed by said Lehigh Valley Railroad Company, said t of cocoanut oil by tank barge from said 29th Street Pier to said il terminal at said Claremont Terminal, and at said Claremont erminal said defendant, acting for and on behalf of said Lehigh alley Railroad Company, did pump said cocoanut oil into a cer- in railway tank car bearing the initials and number SHPX 7639; at thereafter said common carriers did transport by railroad said ipment, loaded in and upon said railroad tank car as aforesaid,

over said connecting railway lines in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $230.88 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 57,720 pounds.

5. That on, to wit, April 21, 1933, said defendant, pursuant to an arrangement and agreement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of cocoanut oil, did pay and cause to be paid to said Lehigh Valley Railroad Company, said pumping charge in the sum of, to wit, $11.54, being at the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 57,720 pounds.

35 6. That said Durkee Famous Foods, Inc., did pay for the said transportation, including said pumping of the oil from tank barge to tank cars, said sum of $230.88, and only said sum of $230.88, instead of the lawful aggregate freight charge, applicable under the aforesaid tariffs and schedules, of, to wit, $242.42, based and computed upon said line haul rate of 40 cents per 100 pounds and said weight of, to wit, 57,720 pounds, plus said pumping charge of 2 cents per 100 pounds and said weight of, to wit, 57,720 pounds; and said Durkee Famous Foods, Inc., did refrain from paying said common carriers or either of them or said defendant or any other person or corporation, said pumping charge of 2 cents per 100 pounds applicable upon said shipment of cocoanut oil under and by virtue of said tariffs and schedules.

7. That on, to wit, April 21, 1933, Manhattan Lighterage Corporation, defendant aforesaid, in the District of New Jersey and with the jurisdiction of this Court, well knowing the premises aforesaid, unlawfully did knowingly, by means of the device aforesaid, offer, grant and give a concession of 2 cents per 100 pounds in respect of the transportation of the aforesaid shipment of property by said common carriers in interstate commerce whereby said property was transported for said Durkee Famous Foods, Inc., from said New York Harbor to said Chicago at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

36 COUNT 10

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and 2 and 3 of the sixth count of this indictment, which said facts

are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That during said period on, to wit, April 15, 1933, Durkee Famous Foods, Inc., tendered to said Lehigh Valley Railroad Company at 29th Street Pier, Brooklyn, in the State of New York, such point being within said free lighterage and floatage limits of said New York Harbor as defined in said schedules and tariffs, together with other shipments of cocoanut oil weighing in excess of 240,000 pounds, a shipment of cocoanut oil of an aggregate weight of, to wit, 58,160 pounds, that being a carload lot, which said cocoanut oil was a part of a larger lot of cocoanut oil theretofore transported to said New York Harbor by a certain vessel, to wit, S. S. "Steel Scientist," with directions to transport said 58,160 pounds of cocoanut oil from said 29th Street Pier in said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.

3. That prior to April 15, 1933, said Durkee Famous Foods, Inc., did order in writing from said Lehigh Valley Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey, of said lot of cocoanut oil which had been transported as aforesaid to said New York Harbor by said vessel.

37 4. That said Lehigh Valley Railroad Company did thereupon at said 29th Street Pier accept delivery of said 58,160 pounds of cocoanut oil and, tank barges being then and there available, did handle, by and through its agent, said defendant, acting for and employed by said Lehigh Valley Railroad Company, said lot of cocoanut oil by tank barge from said 29th Street Pier to said rail terminal at said Claremont Terminal, and at said Claremont Terminal said defendant, acting for and on behalf of said Lehigh Valley Railroad Company, did pump said cocoanut oil into a certain railway tank car bearing the initials and number SHPX 7677; that thereafter said common carriers did transport by railroad said shipment, loaded in and upon said railroad tank car as aforesaid, over said connecting railway lines and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago, and did collect from said Durkee Famous Foods, Inc., freight charges in the amount of, to wit, $232.64 based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 58,160 pounds.

5. That on, to wit, April 21, 1933, said defendant, pursuant to an arrangement and agreement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of cocoanut oil, did pay and cause to be paid to said Lehigh Valley Railroad Company said pumping

charge in the sum of, to wit, $11.63, being at the rate of 2 cent
100 pounds upon the aforesaid weight of, to wit, 58,160 po
38 6. That said Durkee Famous Foods, Inc., did pay fo
said transportation, including said pumping of the oil
tank barge to tank cars, said sum of $232.64, and only said su
$232.64, instead of the lawful aggregate freight charge, appli
under the aforesaid tariffs and schedules, of, to wit, $244.27,
and computed upon said line haul rate of 40 cents per 100 po
and said weight of, to wit, 58,160 pounds, plus said pumping ch
of 2 cents per 100 pounds and said weight of, to wit, 58,160 po
and said Durkee Famous Foods, Inc., did refrain from paying
common carriers or either of them or said defendant or any
person or corporation said pumping charge of 2 cents per 100 po
applicable upon said shipment of cocoanut oil under and by virt
said tariffs and schedules.

7. That on, to wit, April 21, 1933, Manhattan Lighterage Cor
tion, defendant aforesaid, in the District of New Jersey and w
the jurisdiction of this Court, well knowing the premises afore
unlawfully did knowingly, by means of the device aforesaid,
grant, and give a concession of 2 cents per 100 pounds in respe
the transportation of the aforesaid shipment of property by
common carriers in interstate commerce whereby said property
transported for said Durkee Famous Foods, Inc., from said
York Harbor to said Chicago at a less rate and charge than
named and provided in the schedules and tariffs of said common
riers published and filed as aforesaid, contrary to the form o
statute in such case made and provided and against the peace
dignity of the United States.

39 COUNT 11

And the Grand Jurors aforesaid, upon their oaths aforesaid
further present:

1. The facts set forth in paragraph numbered one of the first
of this indictment, which said facts are hereby referred to an
corporated in this count as fully as if they were herein repeated.

2. That throughout said period Erie Railroad Company and
Cleveland, Cincinnati, Chicago & St. Louis Railway Company,
and still are, corporation common carriers engaged in the transp
tion of property, in interstate commerce, by railroad, for hire,
over and by means of their respective connecting railway lines
erated a through railway route for the transportation of prop
including palm oil, in carload lots, from alongside vessels and
points in New York Harbor to a certain point on the line of
The Cleveland, Cincinnati, Chicago & St. Louis Railway Compan
wit, Jeffersonville in the State of Indiana.

3. That throughout said period said common carriers had pr
and had published and had filed with the Interstate Commerce
mission schedules and tariffs of rates and charges which named

showed the joint rate and charge of said common carriers for the transportation of palm oil in carload lots, from said New York Harbor to said Jeffersonville, over said through railway route, to be 40 cents per 100 pounds, said rate being hereinafter referred to as the line haul rate; that said schedules and tariffs providing said line haul rate further provided that said rate applied from points within
40 free lighterage limits of said New York Harbor as provided for in accordance with certain tariffs and schedules of rules, regulations, and charges governing the acceptance and handling of freight at, and for all deliveries in, said New York Harbor, which said last mentioned tariffs and schedules had been duly printed and had been published and had been filed with the Interstate Commerce Commission by said Erie Railroad Company; that said last mentioned tariffs and schedules provided and defined free lighterage and floatage limits in said New York Harbor and further provided that, when ordered by the shipper or consignee in writing and tank barges were available, such articles therein designated as "not lighterage free," including palm oil, would be handled in lots of 240,000 pounds or more, in tank barges in lieu of tank cars on floats from alongside steamship and other points in such free lighterage and floatage limits in said New York Harbor as defined in said schedules and tariffs, to the rail terminals of said Erie Railroad Company, the transfer from barges to tank cars to be at the expense of the shipper or consignee, for which service a charge of 2 cents per 100 pounds, hereinafter referred to as pumping charge, would be made in addition to said line haul rate; that said rate of 40 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of palm oil hereinafter described.

4. That during said period on, to wit, September 26, 1932, Colgate-Palmolive-Peet Company, as consignor, tendered to said Erie
41 Railroad Company at a certain point in New York Harbor, to wit, Pier 36 Brooklyn, in the State of New York, said points being within said free lighterage and floatage limits of said New York Harbor as defined in said schedules and tariffs, together with other shipments of palm oil weighing in excess of 240,000 pounds, a shipment of palm oil of an aggregate weight of, to wit, 302,300 pounds, that being five carload lots, which said palm oil had theretofore been transported to said New York Harbor by a certain vessel, to wit, S. S. "West Humhaw," with directions to transport said 302,300 pounds of palm oil from said Pier 36 in said New York Harbor over said connecting railway lines, to said Jeffersonville, consigned to said Colgate-Palmolive-Peet Company.

5. That during said period on, to wit, September 23, 1932, said Colgate-Palmolive-Peet Company did order in writing from said Erie Railroad Company tank barges in lieu of tank cars on floats for the handling, from alongside said vessel in said New York Harbor to the rail terminal of said Erie Railroad Company at Long Dock in the State of New Jersey, of said lot of palm oil which had been transported as aforesaid to said New York Harbor by said vessel.

6. That said Erie Railroad Company did thereupon, at said Pier 36, accept delivery of said 302,300 pounds of palm oil and, tank barges being then and there available, did handle, by and through its agents, said defendant, acting for and employed by said Erie Railroad Company, said lot of palm oil by tank barge from said Pier 36 to said rail terminal at said Long Dock, and at said Long Dock said de-
41a fendant, acting for and on behalf of said Erie Railroad Company, did pump said palm oil into certain railway tank cars bearing the initials and numbers TPCX 102, SHPX 9109, SHPX 9101, SHPX 9116 and SHPX 9118; that thereafter said common carriers did transport by railroad said shipment, loaded in and upon said railroad tank cars as aforesaid, over said connecting railway lines in and through the district of New Jersey and within the jurisdiction of this Court, to said Jeffersonville, and did collect from said Colgate-Palmolive-Peet Company freight charges in the amount of, to wit, $1,209.20, based only upon the aforesaid line haul rate of 40 cents per 100 pounds and said weight of, to wit, 302,300 pounds.

7. That on, to wit, October 17, 1932, said defendant, pursuant to an arrangement and agreement theretofore made with said Colgate-Palmolive-Peet Company and with intent secretly to assume and absorb for the benefit of said Colgate-Palmolive-Peet Company said pumping charge of 2 cents per 100 pounds provided in said schedules and tariffs and applicable upon said shipment of palm oil, did pay and cause to be paid to said Erie Railroad Company, said pumping charge in the sum of, to wit, $60.49, being at the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 302,300 pounds.

8. That said Colgate-Palmolive-Peet Company did pay for the said transportation, including said pumping of the oil from tank barge to tank cars, said sum of $1,209.20, and only said sum of $1,209.20, instead of the lawful aggregate freight charge, applicable under the aforesaid tariffs and schedules, of, to wit, $1,273.69, based and computed upon said line haul rate of 40 cents per 100 pounds and
42 said weight of, to wit, 302,300 pounds, plus said pumping charge of 2 cents per 100 pounds and said weight of, to wit, 302,300; and said Colgate-Palmolive-Peet Company did refrain from paying said common carriers or either of them or said defendant or any other person or corporation, said pumping charge of 2 cents per 100 pounds applicable upon said shipment of palm oil under and by virtue of said tariffs and schedules.

9. That on, to wit, October 17, 1932, Manhattan Lighterage Corporation, defendant aforesaid, in the District of New Jersey and within the jurisdiction of this Court, well knowing the premises aforesaid, unlawfully did knowingly, by means of the device aforesaid, offer, grant and give a concession of 2 cents per 100 pounds in respect of the transportation of the aforesaid shipment of property by said common carriers in interstate commerce whereby said property was transported for said Colgate-Palmolive-Peet Company from said New York Harbor to said Jeffersonville at a less rate and charge than that named and provided in the schedules and tariffs of said common

arriers published and filed as aforesaid; contrary to the form of the tatute in such case made and provided and against the peace and ignity of the United States.

JOHN J. QUINN,
United States Attorney.

The United States of America vs. Manhattan Lighterage Corporaon. Indictment for Viol. Sec. 1, Elkins Act; Sec. 41, Title 49 U. S. C. A. True Bill. J. L. Williamson, Foreman. John J. Quinn, U. S. Attorney.

[File endorsement omitted.]

3 In United States District Court, District of New Jersey

[Title omitted.]

Criminal No. 7919–b

Plea in bar to indictment

Filed June 18, 1937

This defendant, Manhattan Lighterage Corporation, by its attorey in this behalf, Frank M. Swacker, comes into court here, and, havng heard read the said alleged indictment found at the January Term f this court in the year 1937, which said alleged indictment was led April 9, 1937, says that the United States of America ought not urther to prosecute said indictment, or any count thereof, against it, ecause of the following matters and things, which it pleads in bar f its prosecution for any and all of the alleged offenses therein harged, and respectfully avers as follows, to wit:

1. That the alleged offenses attempted to be set forth in each nd every count of the said alleged indictment, if committed at all, ere committed more than three years preceding the return of the lleged indictment herein, during which period said defendant had ot fled justice, and consequently prosecution thereof is barred by he statute of limitations applicable thereto, 18 U. S. Code, section 82.

2. Defendant repeats and realleges the averments of Paragraph 1 hereof, and further shows that, at the April Term in the year 4 1934 of this court, an indictment was returned by the Grand Jury, being file number 6828–b, covering the same offenses ttempted to be alleged in and by the present alleged indictment. That thereafter defendant filed a motion to quash the indictment eturned by the April 1934 Grand Jury, and thereafter, to wit: March 15, 1937, an order was entered at the instance of the United States Attorney in that said cause, reading as follows:

"It appearing that motions to quash the indictment have been iled in the above matter, which said motions raise the same points

as were raised in a similar motion filed in United States vs. Durkee Famous Foods, Inc., No. 6821–b; and

"It further appearing that a memorandum opinion has been filed in the last mentioned case and an order quashing the indictment in that case having been entered in accordance therewith,

"Now, March 15, 1937, for the reasons set forth in the opinion filed in United States vs. Durkee Famous Foods, Inc., No. 6821–b, the indictment in this case be and it is hereby quashed.

"GUY L. FAKE, *Judge.*"

That the indictment herein returned by the January 1937 Grand Jury was not returned in conformity with 18 U. S. Code, section 587, which provides only for the return of a new indictment when one has been found defective, "at any time during the next succeeding term of court following such finding, during which a grand jury thereof shall be in session," inasmuch as the next succeeding term of court following March 15, 1937, was the April Term commencing April 6, 1937.

3. The defendant realleges and reaffirms the averments of Paragraphs 1 and 2 hereof, and further shows that, as appears from the opinion of the court filed in United States vs. Durkee Famous Foods, Inc., No. 6821–b, the indictment returned by the April 1934 Grand Jury, No. 6828–b, was by the court found bad in substance and the allegations thereof not to constitute a crime. The said order quashing said indictment was therefore an appealable order under Title
45 U. C. Code, section 682, and consequently 18 U. S. Code, section 587, has no application to such an order, but is, and is intended to be, confined to the quashing of indictments for defects of form and pleadings, which orders are not appealable under Title U. S. Code, section 682.

All of which said defendant, Manhattan Lighterage Corporation, is ready and willing to verify, and therefore pleads the same in bar of any prosecution or punishment under said indictment or any count thereof, and says that to prosecute or punish it thereunder for any of the alleged offenses charged therein is contrary to the provisions of the statute of limitations, 18 U. S. Code, section 582.

Wherefore, the defendant prays judgment that the said alleged indictment be not further prosecuted against it, and that by this court it may be dismissed and discharged from the said premises without day and the said alleged indictment held for naught and quashed.

Dated Trenton, N. J., June 18, 1937.

MANHATTAN LIGHTERAGE CORPORATION.
Defendant.

By FRANK M. SWACKER,
Attorney,
Office and Post Office Address 120 Broadway, New York City, N.Y.

I hereby certify that the foregoing plea in bar is not interposed for delay, and in my opinion is well founded in point of law.

Dated Trenton, N. J., June 18, 1937.

FRANK M. SWACKER,
Counsel for Defendant,
Manhattan Lighterage Corporation.

[File endorsement omitted.]

In United States District Court

Criminal No. 7919–b

[Title omitted.]

Answer of United States to plea in bar to indictment

Filed Aug. 2, 1937

And now, August 2nd, 1937, comes the United States of America, by John J. Quinn, United States Attorney in and for the District of New Jersey, and in answer to the Plea in Bar to the indictment filed April 9, 1937, in the above matter, respectfully represents:

1. That in answer to the averments contained in paragraph numbered 1. of the Plea in Bar it is admitted that the alleged offenses set forth in each and every count of said indictment were committed more than three years preceding April 9, 1937, the date when said indictment was returned, during which period said defendant had not fled justice, but denies that prosecution of each and every offense alleged to have been committed in said indictment is barred by the statute of limitations.

2. That in answer to the averments contained in paragraph numbered 2 of the Plea in Bar it is admitted that at the April term in the year 1934 of this Court an indictment was returned by the grand jury, at file No. 6828b, covering the same offenses alleged in and by the present indictment; that thereafter defendant herein filed a motion to quash said indictment returned by the April 1934 grand jury, and that thereafter on March 15, 1937, an order was entered on defendant's motion to quash said indictment in the language set out in paragraph 2 of the Plea in Bar, but denies that the indictment herein, which was returned by the January 1937 grand jury, was not returned in conformity with 18 U. S. Code, Section 587, and further avers that under and by virtue of 18 Code, Sec. 587, limitation of prosecution of the offenses alleged in the indictment herein to have been committed by said defendant, was stayed.

3. That in answer to the averments contained in paragraph numbered 3 of said Plea in Bar it is denied that the opinion of the Court

upon which the aforesaid order quashing said previous indictment was made, held that said previous indictment was bad in substance or that no offense described by 49 U. S. Code, Sec. 41, had been alleged to have been committed, but avers that said opinion holding that said previous indictment was insufficient was based upon a construction of said indictment so as to demonstrate the failure of the government to allege essential facts necessary to bring the offense within 49 U. S. Code, Section 41; and in further answer it is averred that whether or not the order made quashing said previous indictment was an appealable order under 18 U. S. Code, Section [illegible] is immaterial in so far as the application of 18 U. S. Code, Section 587, is concerned.

49

4. And in further general answer it is averred that the indictment herein filed April 9, 1937, is otherwise good and sufficient in law.

Wherefore, the United States of America prays that said Plea in Bar be forthwith dismissed and that said defendant be put upon its trial.

UNITED STATES OF AMERICA,
By JOHN J. QUINN,
United States Attorney,
WILLIAM F. SMITH,
Assistant United States Attorney.
DANIEL H. KUNKEL,
Special Assistant to the United States Attorney.

[File endorsement omitted.]

50 In United States District Court, District of New Jersey

Criminal No. 7918–b

UNITED STATES OF AMERICA

v.

DURKEE FAMOUS FOODS, INC.

Criminal No. 7919–b

UNITED STATES OF AMERICA

v.

MANHATTAN LIGHTERAGE CORPORATION

Criminal No. 7920–b

UNITED STATES OF AMERICA

v.

COLGATE-PALMOLIVE-PEET COMPANY

Opinion

(On defendants' pleas in bar to indictments)

NEWARK, N. J.,
Tuesday, June 14, 1938.

fore Hon. GUY L. FAKE, U. S. D. J.

ppearances: Daniel H. Kunkel, Esq., Special Assistant to the ed States Attorney, for the Government. Roger Hinds, Esq., for ndant Durkee Famous Foods, Inc. Frank M. Swacker, Esq., for ndant Manhattan Lighterage Corporation. Messrs. Wall, ght, Carey & Hartpence, by John A. Hartpence, Esq., and Alfred Conway, Esq., for defendant Colgate-Palmolive-Peet Company.

W. W. Heironimnus, Official Reporter.

The COURT. (Orally, at close of argument.) The issues here arise on three indictments, to each of which pleas in bar have filed. This memorandum will be dispositive of the three cases. he defendants were indicted on the 9th of April, 1937, for alleged ations of the Elkins Act, Title 49, Section 41.

he acts complained of in the indictments having been committed, rding to the dates set forth therein, more than three years prior he filing of the indictments. Section 582 of Title 18 of the U. S. e provides as follows:

No person shall be prosecuted, tried, or punished for any offense, capital, except as provided in Section 584 of this Title, unless the ctment is found or action is instituted within three years next r such offense shall have been committed."

is contended for the Government that the pleas should not be ained because Section 587 of Title 18 of the U. S. Code provides ollows:

Whenever an indictment is found defective or insufficient for any e after the period prescribed and the applicable Statute of Limi- ons has expired, a new indictment may be returned at any time ng the next succeeding term of Court following such finding, ng which the Grand Jury thereof shall be in session."

is urged that a reasonable and proper consideration of this sec- causes it to become effective as to the then existing term of rt, notwithstanding the fact that the statute itself is silent as to the existing term. (Citing Endlich on Interpretation of Statutes, es 599, etc. U. S. v. N. Y. Central Railroad, 212 U. S. 509; U. S. v. Koenig Coal Co., 270 U. S. 512; U. S. vs. Baltimore Post Co., 2 Fed. (2d) 761, affirmed 268 U. S. 388; Ozawa vs. U. S., 260 U. S. 178.)

ounsel for the defendants argue that to so construe the statute ld cause the Court to enter the sphere of the legislature and in ct amend the Act to read as follows:

"A new indictment may be returned at any time during the next succeeding term of court, following such finding, during which the Grand Jury thereof shall be in session and as well at the Term in which the indictment is found defective."

Moreover, it is urged that Section 587 must be strictly construed because it is an exception to the Statute of Limitations.

Other arguments are offered by counsel for the defense, which appear in defendants' briefs. The cite the following cases to sustain their position: U. S. v. Sheldon, 2 Wheaton 119–121 and 122. U. S. vs. McElvaine, 272 U. S. 633 at 639. U. S. vs. Scherton, 285 U. S. 518 at 521–2. 16 Corpus Juris 228, Section 350.

The indictments were returned by a Grand Jury sitting for the January Term of Court on April 9, 1937, but within the time fixed by law for the April Term of Court at Newark, the January Term having been extended by an order of the Court.

At the time the previous indictments were quashed by this Court, the three-year Statute of Limitations had then run against the alleged offenses.

* * * * * * *

NEWARK, N. J.,
Monday, June 27, 1938.

(Hearing continued from June 14, 1938. Same appearances.)

THE COURT. (Orally, at close of argument.) At the last session I stated the facts and raised the issues upon which counsel have appeared before me today. Both sides have been diligent in their endeavors to assist the Court in ascertaining the law to be followed here. No cases have been discovered bearing upon a construc-
53 tion of the section of the Statute of Limitations which is here involved. This has resulted in much research in an endeavor to find an analogous situation, and upon careful consideration of the arguments presented by counsel, as well as a consideration of the cases they have cited, it is my conclusion that the Court, being without power to amend the statute involved, and it appearing that the statute itself contains no ambiguity, either patent or latent, must give to the statute the generally accepted meaning of the language used therein. This leads to the inescapable conclusion that where an indictment has been found to be defective after the passage of the prescribed period of limitation, the one and only Grand Jury which can hand down a new indictment is that Grand Jury which is authorized to act at the term next succeeding the term at which the Court found the indictment to be defective; and it appearing, as it does here, that the indictments under review were not found by a Grand Jury authorized as aforesaid, the indictments must necessarily fall.

The pleas in bar are therefore sustained.

54 In United States District Court, District of New Jersey

On Plea in Bar. Criminal No. 7919–B

UNITED STATES OF AMERICA

vs.

MANHATTAN LIGHTERAGE CORPORATION, DEFENDANT

Order sustaining plea in bar

Filed June 28, 1938

This matter being opened to the Court by Frank M. Swacker, Esq., of counsel with the defendant, Manhattan Lighterage Corporation, upon said defendant's Plea in Bar to the indictment herein and each and every count thereof, and due notice to plead having been duly served upon the attorney for said defendant by the United States Attorney, and the United States of America appearing by John J. Quinn, Esq., United States Attorney, and Daniel H. Kunkel, Esq., Special Assistant United States Attorney, and the said defendant, Manhattan Lighterage Corporation appearing by Frank M. Swacker, Esq., its attorney, and the Court having heard and considered the matter on argument, and on the briefs of the respective counsel, and it appearing that said Plea in Bar is good and sufficient and should be sustained;

It is, on this 28 day of June 1938, ordered that the said Plea in Bar to said indictment herein be and the same is hereby sustained, and that said indictment be not further prosecuted against said defendant, and that said indictment be and the same is hereby accordingly dismissed, discharged, held for nought and quashed.

GUY L. FAKE,
United States District Court Judge.

Consented to as to form only:

JOHN J. QUINN,
United States Attorney.

By: DANIEL H. KUNKEL,
Special Assistant United States Attorney.

55 [File endorsement omitted.]

56 In United States District Court, District of New Jersey

Order continuing the January 1937 Term of Court at Trenton, New Jersey, to the April 1937 Term of Court at Newark, New Jersey

Filed April 5, 1937

It being presented to the Court by John J. Quinn, United States Attorney for the District of New Jersey, that certain sentences are

still pending in cases before this Court, and other business of the United States is still pending before the Court, and applications being made,

It is, thereupon on this 5th day of April 1937, ordered that the January 1937 Term of this Court be and the same is hereby extended and continued during the April 1937 Term and until the further order of this Court for the following and all other purposes:

1. In order that the Grand Jury of that term may dispose of its unfinished business.

2. In order that the sentences set forth on the annexed list marked "Schedule A" and all other sentences pending before the Court may be imposed.

3. In order that any other business, procedure or practice pertaining to the Court or the Government of the United States may be transacted identically as if the January 1937 Term of Court had not expired.

FORMAN, *Judge.*

58 [File endorsement omitted.]

59 In United States District Court, for the District of New Jersey

[Title omitted.]

Criminal No. 7919–B

Petition for appeal

Filed July 25, 1938

Now comes the United States of America, plaintiff, by its counsel, and says that on June 28, 1938, this court rendered its judgment in favor of the defendant against the plaintiff, in which judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors herewith filed.

Wherefore, United States of America prays that an appeal may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

John J. Quinn,
JOHN J. QUINN,
United States Attorney.

Dated this 25th day of July 1938.
[File endorsement omitted.]

60 In United States District Court for the District of New Jersey

[Title omitted.]

Criminal No. 7919–B

Assignment of errors

Filed July 25, 1938

United States of America, plaintiff, by its counsel, now comes and, in connection with its petition for an appeal, files the following assignment of errors upon which it will rely in its appeal to the Supreme Court of the United States from the final judgment rendered by this Court on June 28, 1938.

The District Court erred:

1. In sustaining the plea in bar.

2. In not overruling and dismissing the plea in bar.

3. In holding and adjudging that the statute of limitations had barred the prosecution of the offenses alleged in the several counts of the indictment.

4. In holding and adjudging that the Act of May 10, 1934 (U. S. C. Title 18, Sec. 587), did not limit the application of the statute of limitations (U. S. C. Title 18, Sec. 582) so as to permit the new indictment to be returned by the grand jury empaneled at and in session during the same term of court at which the prior indictment was found defective and insufficient.

5. In holding and adjudging that the Act of May 10, 1934 (U. S. C. Title 18, Sec. 587), was effective to stay the statute of limitations only where the new indictment is returned by a grand jury in session during the next succeeding term of court following the
61 term at which the prior indictment was found defective or insufficient.

6. In failing and refusing to construe the statutes on which the new indictment was founded as permitting the return of the new indictment by the grand jury empaneled at and for and in session during the same term of court at which the prior indictment was found defective or insufficient.

7. In failing and refusing to construe the Act of May 10, 1934 (U. S. C. Title 18, Sec. 587), as permitting the return of the new indictment by the grand jury empaneled at and for and in session during the term of court at which the prior indictment was found defective or insufficient.

8. In failing and refusing to construe the Act of May 10, 1934 (U. S. C. Title 18, Sec. 587), as permitting the return of the new indictment by the first grand jury in session upon or following the date upon which the prior indictment was found defective or insufficient, regardless of whether such grand jury was empaneled for the

same term, or the next succeeding term, or some still later term following the term of court at which the prior indictment was found defective or insufficient.

9. In entering the order of June 28, 1938, sustaining the plea in bar and dismissing and quashing the indictment.

John J. Quinn,
JOHN J. QUINN.
United States Attorney.

Dated this 25th day of July 1938.
[File endorsement omitted.]

62 In United States District Court for the District of New Jersey

Criminal No. 7919–B

[Title omitted.]

Order allowing appeal

Filed July 25, 1938

United States of America, plaintiff, having by its counsel made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court entered June 28, 1938, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and adjudged that the appeal be and the same is hereby allowed as prayed and made returnable within forty (40) days from the date hereof, and the clerk is directed to transmit forthwith to the Supreme Court of the United States a properly authenticated transcript of the record, proceedings and papers on which said final judgment was made and entered.

This 25 day of July 1938.

JOHN BOYD AVIS,
United States District Judge.

[File endorsement omitted.]

63 [Citation in usual form showing service on Frank M. Swacker, filed July 30, 1938, omitted in printing.]

[File endorsement omitted.]

64 In United States District Court, District of New Jersey

No. 7919b

[Title omitted.]

Docket entries

1937
Apr. 9—Indictment for Violating Section 1, Elkins Act &c filed.
June 1—Ordered adjourned to June 18, 1937.
18—Plea in bar by Frank M. Swacker, 120 Broadway, N. Y. City, Atty, filed.
Aug. 2—Answer of United States to plea in bar filed.
1938
June 14—Argument on plea in bar before Judge Fake.
"—Ord. off to June 27, 1938.
27—Oral Opinion by Judge Fake sustaining plea in bar &c filed.
28—Order Dismissing Indictment, sustaining plea in bar &c filed (Fk).
July 25—Petition for Appeal filed.
"—Assignment of Errors filed.
"—Order allowing Appeal filed (Avis).
"—Citation issued.
"—Statement as to Jurisdiction filed.
30—Citation filed.
"—Notice to Appellee filed.
"—Praecipe for Transcript of Record filed.

65 In United States District Court for the District of New Jersey

Criminal No. 7919–B

[Title omitted.]

Praecipe for transcript of record

Filed July 30, 1938

To the CLERK OF THE DISTRICT COURT:

Please transmit to the Supreme Court of the United States as the transcript of record in the above entitled case, the following pleadings, documents and records:

1. Indictment.
2. Plea in bar.
3. Answer to plea in bar.
4. Opinion of court sustaining the plea in bar.
5. Order on opinion sustaining the plea in bar and quashing the indictment.
6. Order of Court extending the January 1937 Trenton Term.

7. Petition for appeal.
8. Assignment of errors.
9. Statement as to jurisdiction.
10. Order allowing appeal.
11. Notice of service on appellee of petition for appeal, order allo
ing appeal, assignment of errors, and statement as to jurisdiction.
12. Citation on appeal.
13. All docket entries in proper order.
66 14. Praecipe for transcript of record.
15. Clerk's certificate.

John J. Quinn,
JOHN J. QUINN,
United States Attorney.

Service of a copy of the above praecipe is hereby acknowledg
this 25 day of July 1938.

FRANK M. SWACKER,
Attorney for defendant.

[File endorsement omitted.]

67 [Clerk's certificate to foregoing transcript omitted
printing.]

68 In United States District Court, District of New Jersey

Indictment

In the District Court of the United States of America in and f
the District of New Jersey, at the April Term thereof, in the ye
1934.

The Grand Jurors of the United States of America duly e
paneled, sworn and charged to inquire in and for the body of th
same District of New Jersey, upon their oaths present:

COUNT 1

1. That throughout the period extending from January 1, 193
to and including August 31, 1933, Manhattan Lighterage Corpor
tion, hereinafter called defendant, was and still is a corporation o
the State of New York, and was engaged, among other things, i
the operation of tank barges in New York Harbor and in the busi
ness of transporting by tank barge certain bulk fluid commoditie
to wit, palm oil, cocoanut oil, olive oil foots, china wood oil, perill
oil, soya bean oil, fish oil, and molasses, from alongside steamshi
and other points in said New York Harbor to the railway line
and rail terminals of common carriers by railroad located at point
contiguous to New York Harbor.

2. That throughout said period Lehigh Valley Railroad Compan
and Pere Marquette Railway Compa.y, were and still are corpora
tion common carriers engaged in the transportation of property, i

interstate commerce, by railroad, for hire, and over and by means of their respective connecting railway lines, operated a through railway route for the transportation of property including palm oil, in carload lots, from alongside vessels and other points in said
69 New York Harbor to a certain point on the line of said Pere Marquette Railway Company, to wit, Chicago in the State of Illinois.

3. Throughout said period said common carriers had printed and had published and had filed with the Interstate Commerce Commission schedules of tariffs of rates and charges which showed a joint rate and charge of said carriers for the transportation of palm oil, in carload lots, from said New York Harbor to said Chicago, over said through railway route, of 40 cents per 100 pounds; that said schedules and tariffs providing said rate of 40 cents per 100 pounds further provided that said rate applied from points within free lighterage limits of said New York Harbor as provided for and in accordance with certain tariffs and schedules of rules, regulations, and charges governing the acceptance and handling of freight at, and for all deliveries in, said New York Harbor, which said tariffs and schedules had been duly printed and had been published and had been filed with the Interstate Commerce Commission, by said Lehigh Valley Railroad Company; that said last mentioned tariffs and schedules provided and defined free lighterage and floatage limits in said New York Harbor to be:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge, including Harlem River side of Ward's and Randall's Islands.

Brooklyn side—From Pot Cove, Astoria, to and including Newton and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal, and to and including 69th Street, South Brooklyn (Bay Ridge).

70 New York Bay:

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

Points on the New Jersey shore of New York Bay and on the Kill von Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided that property therein specified as articles "not lighterage free," including palm oil, when loaded in tank cars, would be accorded free floatage privilege in lots of six cars or over, or when loaded in less than six cars, provided the total weight of shipments equaled or exceeded

240,000 pounds; that said last mentioned tariffs and schedules further provided that when such articles therein designated as "not lighterage free," including palm oil, in lots of 240,000 pounds, were handled in tank barges in lieu of tank cars on floats from alongside steamships and other points in said free lighterage and floatage limits in said New York Harbor, the transfer from barges to tank cars would be at the expense of the shipper, for which service a charge (hereinafter referred to as pumping charge) of 2 cents per 100 pounds would be made in addition to the rate from New York; that said rate of 4½ cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of palm oil hereinafter described.

4. That prior to August 12, 1932, said Lehigh Valley Railroad Company and said defendant had entered into an agreement and arrangement whereby said defendant agreed and undertook, among other things, to furnish all necessary marine equipment and to transport in tank barges of said defendant all shipments of oils and other bulk commodities as designated by said Lehigh Valley Railroad Company from designated points within said free lighterage and
71 floatage limits of said New York Harbor, to designated piers of said Lehigh Valley Railroad Company in the State of New Jersey and other points, including the pumping of shipments from tank barges into tank cars designated and placed by said Lehigh Valley Railroad Company on and at said piers, for and at a compensation of 6½ cents per 100 pounds; that said arrangement and agreement of employment was in full force and effect throughout all times mentioned in this indictment.

5. That during said period on, to wit, August 12, 1932, Durkee Famous Foods, Inc., as consignor, tendered to said Lehigh Valley Railroad Company at a certain point in New York Harbor, to wit, Pier 60, North River, in the State of New York, being within said free lighterage and floatage limits of said New York Harbor, together with other shipments of palm oil weighing in excess of 240,000 pounds, a shipment of palm oil of an aggregate weight of, to wit, 120,880 pounds, that being two carload lots, which said palm oil was a part of a larger lot of oil theretofore transported to said New York Harbor by a certain vessel, to wit, "Georgic", with directions to transport said 120,880 pounds of palm oil from said New York Harbor over said connecting railway lines, to said Chicago, consigned to said Durkee Famous Foods, Inc.; that said Lehigh Valley Railroad Company by and through said defendant, acting for and employed by said Lehigh Valley Railroad Company under said arrangement and agreement, then and there accepted delivery of said palm oil, and transported said palm oil by tank barge from said Pier 60, North River, to the rail terminal of said Lehigh Valley Railroad Company at Claremont Terminal in the State of New Jersey and at said Claremont Terminal pumped said palm oil into certain railway tank cars bearing the initials and numbers, ISTX 227 and ISTX 285; that

thereafter said common carriers transported said shipment
2 loaded in and upon said railway tank cars, as aforesaid, over said connecting railway line, and in and through the District of New Jersey and within the jurisdiction of this Court, to said Chicago, and did deliver said shipment at said Chicago to said Durkee Famous Foods, Inc., and did collect freight charges in the amount of $483.60 based only upon the aforesaid rate of 40 cents per 100 pounds.

6. That the lawful freight charges applicable upon said shipment under the aforesaid tariffs and schedules was $507.72 being the sum of said line haul rate of 40 cents per 100 pounds based on the aforesaid weight of, to wit, 120,880 pounds and said pumping charge of 2 cents per 100 pounds based upon the aforesaid weight of, to wit, 120,880 pounds.

7. That in accordance with said arrangement and agreement between said Lehigh Valley Railroad Company and said defendant said Lehigh Valley Railroad Company did on, to wit, August 17, 1932, pay to said defendant the sum of, to wit, $78.57 for the lightering by tank barge of said palm oil from said Pier 60, North River, to said rail terminal of said Lehigh Valley Railroad Company at said Claremont Terminal and for the pumping of said palm oil from said tank barge into said tank railway cars at said Claremont Terminal, said sum of, to wit, $78.57 being based and computed at said rate of 1½ cents per 100 pounds.

8. That on, to wit, August 17, 1932, said defendant, pursuant to said arrangement theretofore made with said Durkee Famous Foods, Inc., and with intent secretly to assume and absorb for the benefit of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds provided in said tariffs and schedules of rules, regulations, and charges at said New York Harbor, printed, published, and filed by said Lehigh Valley Railroad Company, as aforesaid, applicable upon said shipment of palm oil, paid to said Lehigh Valley Railroad Company, the sum of $24.28, being the rate of 2 cents per 100 pounds upon the aforesaid weight of, to wit, 120,880 pounds.

9. That said defendant did assume and absorb, for the benefit and advantage of said Durkee Famous Foods, Inc., said pumping charge of 2 cents per 100 pounds.

10. That on, to wit, August 17, 1932, said Manhattan Lighterage Corporation, defendant aforesaid, through and by means of a device employed with purpose to secretly absorb and assume said pumping charge of 2 cents per 100 pounds, for the benefit and advantage of said Durkee Famous Foods, Inc., and thereby reduce said lawfully published and filed tariffs, rates and charges, chargeable to said Durkee Famous Foods, Inc., as aforesaid, and then and there well knowing the provisions of the aforesaid lawfully published and filed tariffs and schedules, and the premises aforesaid, unlawfully did knowingly offer, grant and give to said Durkee Famous Foods, Inc., a concession and discrimination in the amount of 2 cents on each 100 pounds

of said palm oil which was transported in interstate commerce into and through the District of New Jersey, from said New York Harbor to said Chicago whereby said shipment of palm oil was transported by railroad as aforesaid at and for a rate of 40 cents per 100 pounds, which was less than said rates aggregating 42 cents per 100 pounds named in the tariffs and schedules published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

11. That said Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, and Manhattan Oil Transit Corporation, a corporation of the State of New York, and one S. C. Blod-
74 good, an officer and agent of Manhattan Lighterage Corporation, defendant aforesaid, well knowing the premises aforesaid, then and there unlawfully did knowingly aid and abet Manhattan Lighterage Corporation, defendant aforesaid, the said offense in manner and form aforesaid, to do and commit; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT 2

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of the first count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 3

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of the first count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 4

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4
75 of the first count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 5

And the Grand Jurors aforesaid, upon their oaths aforesaid, do rther present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of e first count of this indictment, which said facts are hereby referred and incorporated in this count as fully as if they were herein peated.

* * * * * * *

COUNT 6

And the Grand Jurors aforesaid, upon their oaths aforesaid, do rther present:

* * * * * * *

3. That throughout said period said common carriers had printed nd had published and had filed with the Interstate Commerce Commission schedules of tariffs of rates and charges which showed a oint rate and charge of said carriers for the transportation of eanut oil, in carload lots, from said New York Harbor to said hicago, over said through railway route, of 40 cents per 100 pounds; at said schedules and tariffs providing said rate of 40 cents per 0 pounds further provided that said rate applied from points ithin free lighterage limits of said New York Harbor as provided r and in accordance with certain tariffs and schedules of rules, gulations, and charges governing the acceptance and handling of eight at, and for all deliveries in, said New York Harbor, which said tariffs and schedules had been duly printed and had been published and had been filed with the Interstate Commerce Commission by said Lehigh Valley Railroad Company; that id last mentioned tariffs and schedules provided and defined free ghterage and floatage limits in said New York Harbor to be:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge, including Harlem River side of Ward's and Randall's Islands.

Brooklyn side—From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal, and to and including 69th Street, South Brooklyn (Bay Ridge).

New York Bay:

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

Points on the New Jersey shore of New York Bay and on the Kill von Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided that property therein specified as articles "not lighterage free," including cocoanut oil, when loaded in tank cars, would be accorded free floatage privilege in lots of six cars or over, or when loaded in less than six cars, provided the total weight of shipments equaled or exceeded 240,000 pounds; that said last mentioned tariffs and schedules further provided that when such articles therein designated as "not lighterage free," including cocoanut oil, in lots of 240,000 pounds, were handled in tank barges in lieu of tank cars on floats from alongside steamship and other points in said free lighterage and floatage limits in said New York Harbor, the transfer from barges to tank cars would be at the expense of the shipper, for which service a charge (hereinafter referred to as pumping charge), of 2 cents per 100 pounds would be made in addition to the rate from New York; that said rate of 40 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of cocoanut oil hereinafter described.

77

* * * * * * *

COUNT 7

And the Grand Jurors aforesaid, upon said oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the sixth count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 8

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the sixth count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

78

COUNT 9

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the sixth count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 10

nd the Grand Jurors aforesaid, upon their oaths aforesaid, do
her present:

The facts set forth in paragraph numbered 1 of the first count in paragraphs numbered 2, 3, and 4 of the sixth count of this ctment, which said facts are hereby referred to and incorporated his count as fully as if they were herein repeated.

* * * * * * *

COUNT 11

nd the Grand Jurors aforesaid, upon their oaths aforesaid, do
her present:

* * * * * * *

That throughout said period said common carriers had printed had published and had filed with the Interstate Commerce Commsion schedules of tariffs of rates and charges which showed a t rate and charge of said carriers for the transportation of cocoanut oil, in carload lots, from said New York Harbor to said Columbus, over said through railway route, of 35 cents per 100 pounds; that said schedules and tariffs providing said rate 35 cents per 100 pounds further provided that said rate applied m points within free lighterage limits of said New York Harbor provided for and in accordance with certain tariffs and schedules rules, regulations and charges governing the acceptance and hand- of freight at, and for all deliveries in, said New York Harbor, ich said tariffs and schedules had been duly printed and had been blished and had been filed with the Interstate Commerce Commis-, by said The Delaware, Lackawanna and Western Railroad Com- y; that said last mentioned tariffs and schedules provided and ined free lighterage and floatage limits in said New York Harbor se:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge, including Harlem River side of Ward's and Randall's Islands.

Brooklyn side—From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal, and to and including 69th Street, South Brooklyn (Bay Ridge).

New York Bay:

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

New York Bay—Continued.

Points on the New Jersey shore of New York Bay and on the Kill von Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided that property therein specified as articles "not lighterage free", including cocoanut oil, when loaded in tank cars, would be accorded
80 free floatage privilege in lots of six cars or over, or when loaded in less than six cars, provided the total weight of shipments equaled or exceeded 240,000 pounds; that said last mentioned tariffs and schedules further provided that when such articles therein designated as "not lighterage free", including cocoanut oil, in lots of 240,000 pounds, were handled in tank barges in lieu of tank cars on floats from alongside steamship and other points in said free lighterage and floatage limits in said New York Harbor, the transfer from barges to tank cars would be at the expense of the shipper, for which service a charge (hereinafter referred to as pumping charge) of 2 cents per 100 pounds would be made in addition to the rate from New York; that said rate of 35 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds were the lawful rates and the only lawful rates applicable on the shipment of cocoanut oil hereinafter described.

* * * * * * *

COUNT 12

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4, of the eleventh count, of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 13

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

81 1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4, of the eleventh count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 14

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the eleventh count of this

ictment, which said facts are hereby referred to and incorporated his count as fully as if they were herein repeated.

* * * * * * *

COUNT 15

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

. The facts set forth in paragraph numbered 1 of the first count l in paragraphs numbered 2, 3, and 4 of the eleventh count of this ictment, which said facts are hereby referred to and incorporated his count as fully as if they were herein repeated.

* * * * * * *

COUNT 16

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

* * * * * * *

3. That throughout said period said common carriers had printed and had published and had filed with the Interstate Commerce Commission schedules of tariffs of rates and rges which showed a joint rate and charge of said carriers for the nsportation of cocoanut oil, in carload lots, from said New York rbor to said Columbus, over said through railway route, of 35 ts per 100 pounds; that said schedules and tariffs providing said e of 35 cents per 100 pounds further provided that said rate ap- ed from points within free lighterage limits of said New York rbor as provided for and in accordance with certain tariffs and edules of rules, regulations, and charges governing the accept- e and handling of freight at, and for all deliveries in, said New rk Harbor, which said tariffs and schedules had been duly printed d had been published and had been filed with the Interstate Com- rce Commission, by said The Delaware, Lackawanna and Western ilroad Company; that said last mentioned tariffs and schedules ovided and defined free lighterage and floatage limits in said New rk Harbor to be:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge, including Harlem River side of Ward's and Randall's Islands.

Brooklyn side—From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal, and to and including 69th Street, South Brooklyn (Bay Ridge).

New York Bay:

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

83 Points on the New Jersey shore of New York Bay and on the Kill von Kull, between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided that property therein specified as articles "not lighterage free," including cocoanut oil, when loaded in tank cars, would be accorded free floatage privilege in lots of six cars or over, or when loaded in less than six cars, provided the total weight of shipments equaled or exceeded 240,000 pounds; that said last mentioned tariffs and schedules further provided that when such articles therein designated as "not lighterage free," including cocoanut oil, in lots of 240,000 pounds, were handled in tank barges in lieu of tank cars on floats from alongside steamship and other points in said free lighterage and floatage limits in said New York Harbor, the transfer from barges to tank cars would be at the expense of the shipper, for which service a charge (hereinafter referred to as pumping charge) of 2 cents per 100 pounds would be made in addition to the rate from New York; that said rate of 3 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of cocoanut oil hereinafter described.

* * * * * * *

COUNT 17

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the sixteenth count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

84 COUNT 18

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

1. The facts set forth in paragraph numbered 1 of the first count and in paragraphs numbered 2, 3, and 4 of the sixteenth count of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 19

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

. The facts set forth in paragraph numbered 1 of the first count l in paragraphs numbered 2, 3, and 4 of the sixteenth count of s indictment, which said facts are hereby referred to and incor- ated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 20

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

. The facts set forth in paragraph numbered 1 of the first count l in paragraphs numbered 2, 3, and 4 of the sixteenth count of this ictment, which said facts are hereby referred to and incorporated this count as fully as if they were herein repeated.

* * * * * * *

COUNT 21

And the Grand Jurors aforesaid, upon their oaths aforesaid, do ther present:

* * * * * * *

. That throughout said period said common carriers had printed d had published and had filed with the Interstate Commerce Com- ssion schedules of tariffs of rates and charges which showed a nt rate and charge of said carriers for the transportation of palm , in carload lots, from said New York Harbor to said Monessen, r said through railway route, of 30½ cents per 100 pounds, and oint rate and charge for the transportation of palm oil, in carload s, from said New York Harbor, over said through railway route, said New Castle, of 34 cents per 100 pounds; that said schedules and riffs providing said rates of 30½ cents per 100 pounds and 34 cents r 100 pounds, further provided that said rates applied from points thin free lighterage limits of said New York Harbor as provided r and in accordance with certain tariffs and schedules of rules, gulations, and charges governing the acceptance and handling of eight at, and for all deliveries in, said New York Harbor, which id tariffs and schedules had been duly printed and had been pub- hed and had been filed with the Interstate Commerce Commission, said The New York Central Railroad Company; that said last entioned tariffs and schedules provided and defined free lighterage d floatage limits in said New York Harbor to be:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

86 East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge, includi
Harlem River side of Ward's and Randall's islands.

Brooklyn side—From Pot Cove, Astoria, to and includi
Newtown and Dutch Kills Creeks, and points in Wall
bout Canal, and to Hamilton Avenue Bridge, Gowan
Canal, and to and including 69th Street, South Brookl
(Bay Ridge).

New York Bay:

Points on north and east shore of Staten Island betwe
Bridge Creek (Arlington) and Clifton, both inclusive, a
including Shooter Island.

Points on the New Jersey shore of New York Bay and o
the Kill von Kull between Constable Hook and Avenue C
Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided th
property therein specified as articles "not lighterage free," includi
palm oil, when loaded in tank cars, would be accorded free floata
privilege in lots of six cars or over, or when loaded in less than s
cars, provided the total weight of shipments equaled or exceede
240,000 pounds; that said last mentioned tariffs and schedules furth
provided that when such articles therein designated as "not lighterag
free," including palm oil, in lots of 240,000 pounds, were handled i
tank barges in lieu of tank cars on floats from alongside steamshi
and other points in said free lighterage and floatage limits in sai
New York Harbor, the transfer from barges to tank cars would be m
the expense of the shipper, for which service a charge (hereinafte
referred to as pumping charge) of 2 cents per 100 pounds would b
made in addition to the rate from New York.

* * * * * * *

87

COUNT 22

And the Grand Jurors aforesaid, upon their oaths aforesaid, do
further present:

1. The facts set forth in paragraph numbered 1 of the first coun
and in paragraphs numbered 2, 3, and 4 of the twentieth count o
this indictment, which said facts are hereby referred to and incor
porated in this count as fully as if they were herein repeated.

* * * * * * *

COUNT 23

And the Grand Jurors aforesaid, upon their oaths aforesaid, do
further present:

* * * * * * *

3. That throughout said period said common carriers had printed
and had published and had filed with the Interstate Commerce

mmission schedules of tariffs of rates and charges which showed joint rate and charge of said carriers for the transportation of lm oil, in carload lots, from said New York Harbor to said Jefferville, over said through railway route, of 40 cents per 100 pounds; at said schedules and tariffs providing said rate of 40 cents per 0 pounds further provided that said rate applied from points thin free lighterage limits of said New York Harbor as provided r and in accordance with certain tariffs and schedules of rules, gulations, and charges governing the acceptance and handling of eight at, and for all deliveries in, said New York Harbor, which id tariffs and schedules had been duly printed and had been published and had been filed with the Interstate Commerce Commission, by said Erie Railroad Company; that said last mentioned riffs and schedules provided and defined free lighterage and floatage limits in said New York Harbor to be:

North River:

New York side—Battery to 135th Street.

New Jersey side—National Storage Docks, Communipaw, to and including Fort Lee, N. J.

East River and Harlem River:

New York side—Battery to Jerome Avenue Bridge including Harlem River side of Ward's and Randall's Islands.

Brooklyn side—From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal, and to and including 69th Street, South Brooklyn (Bay Ridge).

New York Bay:

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

Points on the New Jersey shore of New York Bay and on the Kill von Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

at said last mentioned tariffs and schedules further provided at property therein specified as articles "not lighterage free," inding palm oil, when loaded in tank cars, would be accorded free ntage privilege in lots of six cars or over, or when loaded in less an six cars, provided the total weight of shipments equaled or ceeded 240,000 pounds; that said last mentioned tariffs and schedes further provided that when such articles therein designated as ot lighterage free," including palm oil, in lots of 240,000 pounds, ere handled in tank barges in lieu of tank cars on floats from ongside steamship and other points in said free lighterage and ntage limits in said New York Harbor, the transfer from barges tank cars would be at the expense of the shipper, for which service charge hereinafter referred to as pumping charge of 2 cents per

100 pounds would be made in addition to the rate from
89 York; that said rate of 40 cents per 100 pounds and
pumping charge of 2 cents per 100 pounds, were the lawf
rates and the only lawful rates applicable on the shipment of pe
oil hereinafter described.

* * * * * * *

COUNT 24

And the Grand Jurors aforesaid, upon their oaths aforesaid,
further present:

* * * * * * *

3. That throughout said period said common carriers had print
and had published and had filed with the Interstate Commerce Co
mission schedules of tariffs of rates and charges which showed
joint rate and charge of said carriers for the transportation of pe
oil, in carload lots, from said New York Harbor to said Jeffers
ville, over said through railway route, of 40 cents per 100 pound
that said schedules and tariffs providing said rate of 40 cents p
100 pounds further provided that said rate applied from poi
within free lighterage limits of said New York Harbor as provid
for and in accordance with certain tariffs and schedules of rul
regulations, and charges governing the acceptance and handling
freight at, and for all deliveries in, said New York Harbor, whi
said tariffs and schedules had been duly printed and had be
published and had been filed with the Interstate Commerce Commi
sion, by said Lehigh Valley Railroad Company; that said last me
tioned tariffs and schedules provided and defined free lighterage a
floatage limits in said New York Harbor to be:

North River:
New York side—Battery to 135th Street.
New Jersey side—National Storage Docks, Communipa
to and including Fort Lee, N. J.

90 East River and Harlem River:
New York side—Battery to Jerome Avenue Bridge, inclu
ing Harlem River side of Ward's and Randall's Islands.
Brooklyn side—From Pot Cove, Astoria, to and including
Newtown and Dutch Kills Creeks, and points in Wall
bout Canal, and to Hamilton Avenue Bridge, Gowan
Canal, and to and including 69th Street, South Brookly
(Bay Ridge).

New York Bay:
Points on north and east shore of Staten Island betwee
Bridge Creek (Arlington) and Clifton, both inclusive, and
including Shooter Island.
Points on the New Jersey shore of New York Bay and o
the Kill von Kull between Constable Hook and Avenue C
Bayonne City, opposite Port Richmond, S. I.;

d last mentioned tariffs and schedules further provided that
y therein specified as articles "not lighterage free", including
l, when loaded in tank cars, would be accorded free floatage
e in lots of six cars or over, or when loaded in less than six
ovided the total weight of shipments equaled or exceeded
pounds; that said last mentioned tariffs and schedules further
d that when such articles therein designated as "not light-
ree", including palm oil, in lots of 240,000 pounds, were
l in tank barges in lieu of tank cars on floats from alongside
ip and other points in said free lighterage and floatage limits
New York Harbor, the transfer from barges to tank cars
e at the expense of the shipper, for which service a charge
fter re-referred to as pumping charge of 2 cents per 100
would be made in addition to the rate from New York; that
e of 40 cents per 100 pounds and said pumping charge of 2
r 100 pounds, were the lawful rates and the only lawful rates
ble on the shipment of palm oil hereinafter described.

* * * * * *

COUNT 25

the Grand Jurors aforesaid, upon their oaths aforesaid, do
present:

* * * * * *

at throughout said period said common carriers had printed
d published and had filed with the Interstate Commerce Com-
schedules of tariffs of rates and charges which showed a joint
d charge of said carriers for the transportation of palm oil,
ad lots, from said New York Harbor to said Jeffersonville,
id through railway route, of 40 cents per 100 pounds; that
hedules and tariffs providing said rate of 40 cents per 100
further provided that said rate applied from points within
hterage limits of said New York Harbor as provided for and
rdance with certain tariffs and schedules of rules, regulations,
arges governing the acceptance and handling of freight at,
r all deliveries in, said New York Harbor, which said tariffs
edules had been duly printed and had been published and had
led with the Interstate Commerce Commission, by said The
re, Lackawanna and Western Railroad Company; that said
entioned tariffs and schedules provided and defined free light-
and floatage limits in said New York Harbor to be:

rth River:
New York side—Battery to 135th Street.
New Jersey side—National Storage Docks, Communipaw, to
and including Fort Lee, N. J.

East River and Harlem River:
New York side—Battery to Jerome Avenue Bridge, including Harlem river side of Ward's and Randall's Island
92 Brooklyn side—From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal, and to Hamilton Avenue Bridge, Gowanus Canal and to and including 69th Street, South Brooklyn (Bay Ridge).
New York Bay:
Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.
Points on the New Jersey shore of New York Bay and on the Kill von Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, S. I.;

that said last mentioned tariffs and schedules further provided that property therein specified as articles "not lighterage free," including palm oil, when loaded in tank cars, would be accorded free floatage privilege in lots of six cars or over, or when loaded in less than six cars, provided the total weight of shipments equaled or exceeded 240,000 pounds; that said last mentioned tariffs and schedules further provided that when such articles therein designated as "not lighterage free," including palm oil, in lots of 240,000 pounds, were handled in tank barges in lieu of tank cars on floats from alongside steamship and other points in said free lighterage and floatage limits in said New York Harbor, the transfer from barges to tank cars would be at the expense of the shipper, for which service a charge (hereinafter referred to as pumping charge) of 2 cents per 100 pounds would be made in addition to the rate from New York; that said rate of 40 cents per 100 pounds and said pumping charge of 2 cents per 100 pounds, were the lawful rates and the only lawful rates applicable on the shipment of palm oil hereinafter described.

* * * * * * *

93 In United States District Court, District of New Jersey

UNITED STATES OF AMERICA

vs.

MANHATTAN LIGHTERAGE CORPORATION

Motion to quash

Filed Jan. 15, 1937

Comes now the defendant, Manhattan Lighterage Corporation, by Frank M. Swacker, its attorney, and, upon leave of court, withdraws its plea of not guilty, heretofore interposed, and moves to quash the indictment herein and each and every count thereof, be-

se the same are insufficient in law to require the defendant to swer thereto, for the following reasons:

As shown by the annexed stipulation of the plaintiff, the charge entioned in the last half of the third paragraph of the first count the indictment, and thereafter and in each of the succeeding nts of said indictment, referred to as a pumping charge con- ined in the tariffs and schedules of the carriers mentioned in the dictment, is provided for by a rule reading as follows:

"Property loaded in tank cars will be accorded free floatage ivileges in lots of six cars or over, or when loaded in less than x cars provided the total weight of shipment exceeds or equals 0,000 pounds.

"When ordered by the shipper or consignee, in writing, and tank rges are available, Vegetable Oils, Foots, Settlings and Tank Bot- ms and Fish, Sea Animal, Whale Oils, Linseed Oil, and Molasses lots of 240,000 pounds or more, may be handled in tank barges lieu of tank cars on floats from or to alongside steamship and ints within free lighterage limits of New York Harbor. Transfer om barges to tank cars or from tank cars to barges to be at expense shipper or consignee, for which service a charge of 2 cents per 100 unds will be made in addition to the rates from or to New York."

That is, said pumping charge is applicable upon oils handled in nk barges only "when ordered by the shipper or consignee in iting"; and in no count of said indictment is it alleged that the handling of said oils in tank barges was ordered in writing by the shipper or consignee, and consequently each and every count of said indictment is bad for failure to allege cts constituting a crime.

Wherefore, this defendant respectfully prays that the said indict- ent and each and every count thereof be quashed and held for aught.

(Signed) Frank M. Swacker.
FRANK M. SWACKER,
Attorney for Defendant,
Manhattan Lighterage Corporation.

Dated Newark, N. J., April 3rd, 1935.

In United States District Court, District of New Jersey

[Title omitted.]

Stipulation

It is hereby stipulated by and between the United States of America, the plaintiff, and Manhattan Lighterage Corporation, the defendant, in the above-entitled action, that the charge mentioned in the last half of the third paragraph of the first count of the indict- ment, and thereafter and in each of the succeeding counts of said indictment, referred to as a pumping charge contained in the tariffs

and schedules of the carriers mentioned in the indictment, is provided for by a rule reading as follows:

"Property loaded in tank cars will be accorded free floatage privileges in lots of six cars or over, or when loaded in less than six cars provided the total weight of shipment exceeds or equals 240,000 pounds.

"When ordered by the shipper or consignee, in writing, and tank barges are available, Vegetable Oils, Foots, Settlings and Tank Bottoms and Fish, Sea Animal, Whale Oils, Linseed Oil, and Molasses in lots of 240,000 pounds or more, may be handled in tank barges in lieu of tank cars on floats from or to alongside steamship and points within free lighterage limits of New York Harbor. Transfer from barges to tank cars or from tank cars to barges to be at expense of shipper or consignee, for which service a charge of 2 cents per 100 pounds will be made in addition to the rates from or to New York."

UNITED STATES OF AMERICA,
Plaintiff.

By HARLAN BESSON,
United States Attorney.

MANHATTAN LIGHTERAGE CORPORATION,
Defendant.

By FRANK M. SWACKER,
Attorney for Defendant.

96 [File endorsement omitted.]

97 In United States District Court, District of New Jersey

UNITED STATES OF AMERICA

vs.

MANHATTAN LIGHTERAGE CORP.

Order quashing indictment

Filed March 16, 1937

It appearing that motions to quash the indictment have been filed in the above matter, which said motions raise the same points as were raised in a similar motion filed in United States vs. Durkee Famous Foods, Inc., No. 6821–b; and

It further appearing that a memorandum opinion has been filed in the last mentioned case and an order quashing the indictment in that case having been entered in accordance therewith.

Now, March 15, 1937, for the reasons set forth in the opinion filed in United States vs. Durkee Famous Foods, Inc., No. 6821–b, the indictment in this case be and it is hereby quashed.

(Signed) GUY L. FAKE, *Judge.*

97½ [File endorsement omitted.]

[Clerk's certificate to foregoing papers omitted in printing.]

In United States District Court, District of New Jersey

On Motion to Quash Indictment No. 6821-B

UNITED STATES OF AMERICA

vs.

DURKEE FAMOUS FOODS, INC., DEFENDANT

pearances: Harlan Besson, Esq., United States Attorney. Daniel ankel, Esq., Special Assistant United States Attorney. Burt neiker, Esq., Attorney for Interstate Commerce Commission, ed Roger Hinds, Esq., Attorney for Durkee Famous Foods, for the motion.

Memorandum

Filed Jan. 14, 1937

KE, District Judge:

e indictment here is intended to charge an offense against the sions of section 1 of the Elkins Act, Sec. 41, Title 49, U. S. C. A. gist of the issue before me resides in the allegation in the tment that the defendant "through a device aforesaid, unlaw- did knowingly solicit, accept and receive a concession and dis- nation in respect to interstate transportation of property * * * eby said property was transported by said common carriers at a ate than the published and applicable rate named in the tariffs shed and filed as aforesaid; contrary to the statute in such made and provided."

tion 41 of the Act makes it a criminal offense to "accept or re- any rebate concession, or discrimination in respect to transporta- of any property * * * whereby any such property shall by device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier."

The indictment discloses that the rate involved is 40 cents per hundred pounds and in addition thereto a charge of 2 cents 00 pounds, referred to as a pumping charge. The issue here is l entirely on the 2 cent pumping charge. On this point the in- ent reads as follows: "That said defendant did assume and b, for the benefit and advantage of said Durkee Famous Foods, aid pumping charge of 2 cents per 100 pounds."

is leads to an examination of the rule or tariff for the purpose of taining when and under what circumstances the 2 cent pumping e may become effective. By stipulation in writing between the s it is agreed that the item for pumping arises if at all under a ding as follows:

"Property loaded in tank cars will be accorded free floatage p... ileges in lots of six cars or over, or when loaded in less than six ... provided the total weight of shipment exceeds or equals 240... pounds.

"When ordered by the shipper or consignee, in writing, and ... barges are available, Vegetable Oils, Foots, Settlings and Tank B... toms and Fish, Sea Animal, Whale Oils, Linseed Oil, and Mola... in lots of 240,000 pounds or more, may be handled in tank bar... in lieu of tank cars on floats from or to alongside steamship ... points within free lighterage limits of New York Harbor. Tran... from barges to tank cars or from tank cars to barges to be at expe... of shipper or consignee, for which service a charge of 2 cents p... 100 pounds will be made in addition to the rates from or to N... York."

It should be noted that while the indictment is found under t... Elkins Act, the crime involved is not fully defined in that Act. W... are compelled to look elsewhere for the factors which lead to a co... plete definition. We find these factors in the filed tariff (rule) a... for present purposes they have the same force and effe...
101 statutory provisions. Looking then to the tariff, it will ... seen, among other things, that the 2 cent charge does not bec... effective unless tank barges are "* * * ordered by the shipp... or consignee, in writing and tank barges are available, * * ... These requirements are conditions precedent to the right to bill ... assess the 2 cent charge. It, therefore, follows that no criminal co... cession or discrimination can be spelled out under the Elkins A... when read with the tariff unless these essential conditions are m... in the language of the indictment. The indictment is silent on th... subject; therefore it charges no crime and the motion to quash ma... be granted.

See United States v. Cook, 84 U. S. 186; Davis v. Henderson, 2... U. S. 92; U. S. v. Olds Motor Works, 4 Fed. Supp. 65, and Unit... States v. Wood, 159 Fed. 187.

102 [File endorsement omitted.]

103 In United States District Court, District of New Jersey

On Motion to Quash Indictment No. 6821–B

UNITED STATES OF AMERICA

vs.

DURKEE FAMOUS FOODS, INC., DEFENDANT

Appearances: Harlan Besson, Esq., United States Attorney. Dan... H. Kunkel, Esq., Special Assistant United States Attorney. Burt L... Smelker, Esq., Attorney for Interstate Commerce Commissi...

Roger Hinds, Esq., Attorney for Durkee Famous Foods, Inc., Motion.

ndum correcting and amending a memorandum filed in this cause on January 14, 1937

Filed Jan. 25, 1937

District Judge:

nemorandum filed by me in the above entitled cause on the y of January, 1937, is hereby corrected and amended as fol-

trike out the paragraph on page 2 of the aforesaid memo- which reads as follows:

indictment discloses that the rate involved is 40 cents per l pounds and in addition thereto a charge of 2 cents per 100 referred to as a pumping charge. The issue here is based on the 2 cent pumping charge. On this point the indictment s follows: 'That said defendant did assume and absorb, for efit and advantage of said Durkee Famous Foods, Inc., said g charge of 2 cents per 100 pounds.'"

ert in lieu thereof the following paragraph:

ndictment discloses that the rate involved is 40 cents per hun- ounds and in addition thereto a charge of 2 cents per 100 referred to as a pumping charge. The issue here is based on the 2 cent pumping charge. On this point the indictment s follows: "That said Manhattan Lighterage Company did and absorb, for the advantage of said defendant, said pump- ng charge of 2 cents per 100 pounds."

[File endorsement omitted.]

[Clerk's certificate to foregoing papers omitted in printing.]

Supreme Court of the United States

Stipulation re enlargement of record, etc.

tion of defendant-appellee to enlarge the record in this mat- adding thereto—

morandum opinion of the United States District Court filed 14, 1937, supporting the order referred to in the plea in l answer herein quashing the previous indictment herein al No. 6828-b).

rrecting memorandum opinion of said United States District led January 25, 1937, correcting the above mentioned opinion al No. 6828-b).

tion, including stipulation annexed thereto, to quash said s indictment, filed on or about April 3, 1935 (Criminal No. referred to in the plea in bar and answer herein.

4. Prior indictment herein in said United States District C returned and filed at the April 1934 term of said District C (Criminal No. 6828–b);

having been granted by the Court without objection of the Solic General, it is hereby

Stipulated that, in so far as the said prior indictment is concer only the following parts need be printed:

(a) The first count in full;
(b) Paragraph "1" of Counts 2 to 5, inclusive;
(c) Paragraph "3" of Count 6;
(d) Paragraph "1" of Counts 7 to 10, inclusive;
(e) Paragraph "3" of Count 11;
(f) Paragraph "1" of Counts 12 to 15, inclusive;
107 (g) Paragraph "3" of Count 16;
(h) Paragraph "1" of Counts 17 to 20, inclusive;
(i) Paragraph "3" of Count 21;
(j) Paragraph "1" of Count 22;
(k) Paragraph "3" of Counts 23, 24, and 25.

And it is stipulated that the s. ' first count is typical of all of t twenty-five counts of said prior indictment.

Further stipulated, that the order of court in 6828–B made by D trict Judge Fake and filed on or about March 15, 1937, quashing indictment in this case for the reasons set forth in the opinion in 6821- b, shall also be printed in the record in this appeal.

Dated November 28, 1938.

ROBERT H. JACKSON,
Solicitor General of the United States.
FRANK M. SWACKER,
Counsel for Appellee.
Manhattan Lighterage Corporation.

108 In Supreme Court of the United States

Statement of points and designation of record to be printed

Filed Aug. 30, 1938

I

United States of America, appellant, states that in its brief o oral argument on its appeal in the above entitled cause it will r upon the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is nece for consideration of the points stated by appellant, and the en

anscript of record as transmitted by the Clerk of the District Court hould be printed by the Clerk of this Court.

Robert H. Jackson,
ROBERT H. JACKSON,
Solicitor General.

August —, 1938.

Service of a copy of the above Statement of Points and Designation of Record to be Printed acknowledged August 24, 1938.

FRANK M. SWACKER,
Counsel for Appellee.

[File endorsement omitted.]

[Endorsement on cover:] Enter: Attorney General. File No. 2,795. New Jersey D. C. U. S. Term No. 310. The United States of America, Appellant, vs. Manhattan Lighterage Corporation. Filed August 30, 1938. Term No. 310 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE 1938